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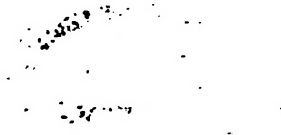
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DOCUMENTS

PRINTED BY ORDER OF

THE SENATE

Commonwealth of Massachusetts

DURING THE SESSION OF THE

GENERAL COURT,

A. D. 1839.



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Boston:  
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1839.

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# **RULES AND ORDERS**

**TO BE OBSERVED IN**

## **THE SENATE**

**OF THE**

**Commonwealth of Massachusetts,**

**FOR THE YEAR 1839.**

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**PUBLISHED BY ORDER OF THE SENATE.**

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**DUTTON AND WENTWORTH, STATE PRINTERS.**

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**1839.**

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*Arrangement of the Senate.*

**PRESIDENT.**

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**LEFT.**

1. George Blake,
2. Charles Marston,
3. Ephraim Hastings,
4. Charles Kimball,
5. William Hancock,
6. Joseph Meigs,
7. Reuben Boies, Jr.,
8. Samuel Lane,
9. Samuel B. Walcott,
10. William Clark, Jr.,
11. Stephen B. Brown,
12. James G. Carter,
13. Samuel G. Goodrich,
14. Jeremiah Spofford,
15. Jared Whitman,
16. James Allen,
17. Sampson Perkins,
18. Josiah Little,
19. Isaiah Breed.

## **RULE**

### ***Of the Duties***

The President shall call the meeting of a quorum on the preceding day to be

He shall preside over the Senate, and shall decide on appeals.

He shall decide on questions of order, and shall decide on appeals.

He shall rise on the Senate, but may remain seated if the President may so direct.

The nomination of the President, and of the chairman, except in cases where the President may so direct that the

*Of the Duties and Powers of President.* 5

VI.

When any member shall require a question to be determined by yeas and nays, the President shall take the sense of the board in that manner, provided one fourth part of the members present are in favor of it.

VII.

When a question is under debate, the President shall receive no motion but to *adjourn*, to *lay on the table*, for the previous question, to *postpone to a day certain*, to *commit*, to *amend*, or to *postpone indefinitely*, which several motions shall have precedence in the order in which they stand arranged; and a motion to adjourn shall be decided without debate.

VIII.

When two or more members happen to rise at once, the President shall name the member who is to speak first.

IX.

The President shall have the right to name a member to perform the duties of the chair, but such substitution shall not extend beyond an adjournment.

X.

In case the President shall be absent at the hour to which the Senate was adjourned, the senior member present shall call the board to order, and shall preside until a President pro tempore be elected.

XI.

Every member, when he speaks, shall stand in his place, and address the President, and when he has done speaking, shall sit down.

*Duties,*

No member shall  
question, to the prev  
spoken, and is des  
twice without obtain

No member speak  
other but by rising.

After a question  
speak to it.

Every member  
or remonstrance  
and in the filing  
object of the in  
place, a brief  
the same shall  
ordered by the

A motion  
be received  
be reduced  
no member  
writing on  
his place,

When  
any member  
on the s  
motion f  
shall



**XVIII.**

A question containing two or more propositions capable of division, shall be divided whenever desired by any member.

**XIX.**

The unfinished business in which the Senate was engaged at the time of the last adjournment, shall have the preference in the orders of the day.

**XX.**

No member shall absent himself from the Senate without leave, unless there be a quorum left present at the Board.

**XXI.**

No member shall act as counsel for any party before any committee of the Legislature.

**XXII.**

No rule or order shall be dispensed with, unless two thirds of the members present shall consent thereto.

**XXIII.**

Whenever a question shall be taken by yeas and nays, the Clerk shall call the name of every member, and all who shall not have been excused shall vote thereon.

**XXIV.**

The books belonging to the Senate Chamber, shall be in the care of the Clerk who shall keep an accurate list thereof; and no book shall be taken from the Senate Chamber by any person without giving notice thereof to the Clerk, who shall enter in a book to be kept by him, the name of the book, and the name of the person taking the same.

# *Of Bills, &c*

**XX**  
All resolves shall be twice having for its object the payment of money, shall pass until they have been first introduced.

**XXV**  
All bills and resolves from the representatives, after they are read, shall be committed to a committee when said bills or resolves shall be read by a joint committee.

**XXVII**  
All bills in the third reading shall be compared with the second reading, shall be committed to a committee on bills in the third reading to compare their relations with and any existing laws relating to the matter, and to see that all such bills are in the technical form.

**XXVIII.**  
No bill shall pass to be engrossed and readings; and bills in the second and resolves in the second reading shall be read in the order of the day for the second time, and shall have that on which leave shall have been given them a second or third time, and shall be read in the order they accordingly; and shall be read in the order of the day, they shall be read.

**XX**  
All engrossed bills shall be read to the standing committee whose duty it shall be to read and if found by the committee to be proper, they shall so

question shall be taken thereon without any further reading, unless, on motion of any member, a majority of the Senate shall be in favor of reading the same as engrossed.

**XXX.**

No engrossed bill shall be amended.

**XXXI.**

A measure once rejected shall not be revived by the Senate, during the same session, except by reconsideration.

**XXXII.**

The following Standing Committees shall be appointed at the commencement of the first session, to wit :—

A Committee on the Judiciary ;

A Committee on Matters in Probate and Chancery ;

A Committee on Education ;

A Committee on Agriculture ;

And each of these Committees shall consist of Three Members.

A Committee on Bills in the third reading ;

A Committee on Engrossed Bills ;

And each of these Committees shall consist of Six Members.

**XXXIII.**

In all elections by ballot of Committees of the Senate, the person having the highest number of votes shall act as chairman.

**XXXIV.**

All Committees may report by bill, resolve, or otherwise ; and such report shall be made the order of the day next succeeding that on which it shall have been made.

**No Committee, or  
a Special Committee  
to occupy the Senate  
Board.**

**In all elections by  
shall be assigned for  
previous thereto.**

## **JOINT RULES AND ORDERS OF THE TWO HOUSES.**

### **I.**

The following Joint Standing Committees shall be appointed at the commencement of the January session, viz :—

- A Committee on Accounts ;
- A Committee on Roads and Bridges ;
- A Committee on Railways and Canals ;
- A Committee on Towns ;
- A Committee on Claims ;
- A Committee on the Militia ;
- A Committee on Parishes and other Religious Societies ;
- A Committee on the Fisheries ;
- A Committee on Banks and Banking ;
- A Committee on Mercantile Affairs & Insurance ;
- A Committee on Public Lands ;
- A Committee on Manufactures ;
- A Committee on the Library ;
- A Committee on Prisons ; and

A Committee on Public Charitable Institutions ;  
And each of said Committees shall consist of two on the part of the Senate, and three on the part of the House, except the Committee on the Library, which, by law, is to consist of three on the part of each House, and no Member of any Committee shall receive compensation for personal services on such Committee, during the Session of the Legislature.

### **II.**

The Joint Committees of the two Houses may report by bill, resolve, or otherwise, to either House, at their discretion ; and all bills and resolves report-

12 *Joint Rules and O*

ed by them, shall be written without interlineation, on paper, with suitable margins, the several sections or res

II  
All papers, while on the two Houses, may be under the respective Clerks, except Bills at last stage.

IV  
After Bills shall have passed, they shall be in the hands of the two Houses, who shall deliver them to the Secretary of the Commonwealth in the manner prescribed by law. The said Clerks shall forthwith deliver to the Committee of the House on Engrossed Bills; and when passed to be enacted in the like manner, be delivered to the Senate on Engrossed Bills.

V.  
After Bills shall have passed, the Clerks of the two Houses shall deliver them to be laid before the Governor, an indorsement being made by the Clerk of the House, in which shall be certified, respectively, that the same originated, which indorsement shall be entered on the Journals by the Clerk of the House, and also the day on which the same were presented to the Governor.

VI.  
All resolves and other papers shall be presented to the Governor of the Commonwealth in the manner as prescribed in the case

CIVIL GOVERNMENT  
OF THE  
**Commonwealth of Massachusetts,**  
FOR THE POLITICAL YEAR 1839.

---

HIS EXCELLENCY  
**EDWARD EVERETT,**  
GOVERNOR.

---

HIS HONOR  
**GEORGE HULL,**  
LIEUTENANT GOVERNOR.

---

COUNCIL.

HENRY SHAW,	<i>of Lanesborough.</i>
CALEB FOOTE,	<i>of Salem.</i>
FRANCIS C. GRAY,	<i>of Boston.</i>
CHARLES HUDSON,	<i>of Westminster.</i>
LEAVITT THAXTER,	<i>of Edgartown.</i>
ISAAC C. BATES,	<i>of Northampton.</i>
DAVID A. SIMMONS,	<i>of Roxbury.</i>
JOSEPH GRINNELL,	<i>of New Bedford.</i>
RUFUS HOSMER,	<i>of Stow.</i>

---

**JOHN P. BIGELOW,**  
*Secretary of the Commonwealth.*

---

**DAVID WILDER,**  
*Treasurer & Receiver General of the Commonwealth.*



**SEN.**

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**MYRON LA**

**PRESII**

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**SUFFOLK D**

**George Blake,  
Josiah Quincy, Jr.,  
Nathan Gurney,  
Samuel T. Armstrong,  
George Morey,  
Charles Leighton,**

**ESSEX DIS**

**Charles Kimball,  
Isaiah Breed,  
Daniel P. King,  
Samuel Lane,  
Josiah Little,  
Jeremiah Spofford,**

**MIDDLESEX DIS**

**Sidney Willard,  
Samuel B. Walcott,  
Lilley Eaton,  
Stuart J. Park,  
Samuel Chandler,**

## WORCESTER DISTRICT.

Linus Child,	<i>of Southbridge.</i>
William Hancock,	<i>of Dudley.</i>
James G. Carter,	<i>of Lancaster.</i>
Thomas Kinnicutt,	<i>of Worcester.</i>
Artemas Lee,	<i>of Templeton.</i>
James Allen,	<i>of Oakham.</i>

## HAMPSHIRE DISTRICT.

Myron Lawrence,	<i>of Belchertown.</i>
William Clark, Jr.	<i>of Northampton.</i>

## FRANKLIN DISTRICT.

Ephraim Hastings,	<i>of Heath.</i>
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## HAMPDEN DISTRICT.

George Ashmun,	<i>of Springfield.</i>
Reuben Boies, Jr.,	<i>of Blandford.</i>

## BERKSHIRE DISTRICT.

Stephen B. Brown,	<i>of Adams.</i>
Lester Filley,	<i>of Otis.</i>

## NORFOLK DISTRICT.

Thomas French,	<i>of Canton.</i>
Samuel G. Goodrich,	<i>of Roxbury.</i>
Joseph L. Richardson.	<i>of Medway.</i>

## PLYMOUTH DISTRICT.

Joseph Meigs,	<i>of Rochester.</i>
Jared Whitman,	<i>of Abington.</i>

**BRISTOL**

Sampson Perkins,  
Seth Whitmarsh,  
Horatio Pratt,

**BARNSTABLE**

Charles Marston,

**NANTUCKET AND DUXBURY**

George B. Upton,

---

**CHARLES CALHOUN**

**W. P. GREGG, Assis.**

**REV. WILLIAM M. F.**

**MILTON HALL, Doc.**

**WINSLOW LEACH,**

## HOUSE OF REPRESENTATIVES.

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**Hon. ROBERT C. WINTHROP,**  
SPEAKER.

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<i>Andover,</i>	Thomas
	Joseph
	William
<i>Beverly,</i>	John Sa
	Thomas
	Edwin M
<i>Boxford,</i>	Moses K
<i>Bradford,</i>	Benjamin
	William M
<i>Danvers,</i>	Lewis Al
	Samuel F
	Abel Nicl
	Henry Pc
<i>Essex,</i>	David Ch
<i>Gloucester,</i>	Samuel L.
	Alexander
	Joseph J.
	Christophe
	Rich'd G.
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<i>West Newbury,</i>	Moses C
	Benjamin

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## COUNTY OF M

<i>Acton,</i>	Nathan
<i>Ashby,</i>	
<i>Bedford,</i>	Reuber
<i>Billerica,</i>	Henry
<i>Boxborough,</i>	
<i>Brighton,</i>	Charles
	Henry
<i>Burlington,</i>	
<i>Cambridge,</i>	Luther
	Josep
	Ezek
<i>Carlisle,</i>	Calvi
<i>Charlestown,</i>	Tho
	Jona
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	Sam
	Tin
<i>Chelmsford,</i>	Am
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<i>Weston,</i>	Jonas Hastings,	2
<i>Wilmington,</i>		
<i>Woburn,</i>	William Flanders,	2
	Leonard Fowle,	
	Calvin A. Wyman,	1

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## COUNTY OF WORCESTER

<i>Ashburnham,</i>	Reuben Townsend,	
<i>Athol,</i>	Benjamin Estabrook,	
	Abner Young,	
<i>Auburn,</i>	Lewis Eddy,	1
	Samuel Eddy,	
<i>Barre,</i>	Nathaniel Holland,	
	Nathaniel Loring,	
<i>Berlin,</i>	Jonathan D. Merriam,	

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<i>Bolton,</i>	Caleb Wheeler,	190
<i>Boylston,</i>	Eli B. Lamson,	73
<i>Brookfield,</i>	Ebenezer Prouty,	262
	Sylvanus Thomas,	404
<i>Charlton,</i>	Aaron Marble,	141
	Alpheus White,	199
	Moses Williams,	209
<i>Dana,</i>	Italy Foster,	236
<i>Douglas,</i>	Warren Humes,	513
	David Richardson,	390
<i>Dudley,</i>	Morris Larned,	185
	Samuel Robinson,	247
<i>Fitchburg,</i>	David Boutelle,	11
	Francis Perkins,	476
<i>Gardner,</i>	Joseph Wright,	243
	Timothy Heywood,	172
<i>Grafton,</i>	Joseph Bruce,	154
	Noah Kimball,	23
<i>Hardwick,</i>	Moses Allen,	165
	Gardiner Ruggles,	490
<i>Harvard,</i>	Asa Daby,	16
	Abel Whitney,	509
<i>Holden,</i>	Tilly Chaffin,	157
	Silas Flagg,	322
<i>Hubbardston,</i>	Micajah Reed,	486
	George Williams,	351
<i>Lancaster,</i>	John G. Thurston,	310
	Silas Thurston, Jr.,	214
<i>Leicester,</i>	Isaac Southgate,	370
	Samuel Watson,	288
<i>Leominster,</i>	Jabez B. Low,	206
<i>Lunenburg,</i>	Daniel Low, Jr.,	414
<i>Mendon,</i>		
<i>Milford,</i>	Ariel Bragg,	58
	Henry Nelson,	418

<i>Milbury,</i>	Job Gorton,	31
	Charles Hale,	21
<i>New Braintree,</i>	Joseph Bowman,	21
<i>Northborough,</i>	Prentiss Keyes,	1
<i>Northbridge,</i>	Benjamin Taft,	4
<i>North Brookfield,</i>	Chauncey Edmands,	3
	Pliny Nye,	4
<i>Oakham,</i>	Alexander Crawford 2d,	
<i>Oxford,</i>	Sylvanus Harris,	2
	Francis Sibley,	4
<i>Paxton,</i>	Artemas Howe,	3
<i>Petersham,</i>	Joseph Brown,	3
	Artemas Bryant,	2
<i>Phillipston,</i>	James Carruth,	3
<i>Princeton,</i>	Alphonso Brooks,	1
<i>Royalston,</i>	Russell Morse,	1
	Arba Sherwin,	1
<i>Rutland,</i>	Calvin G. Howe,	1
<i>Shrewsbury,</i>	Adam Harrington,	
	Azor R. Phelps,	
<i>Southborough,</i>	Sullivan Fay,	
<i>Southbridge,</i>	Stephen Brackett,	
	Bela Tiffany,	
<i>Spencer,</i>	Eleazer B. Draper,	
	Dennis Ward,	
<i>Sterling,</i>	Timothy Endicott,	
	William Goss,	
<i>Sturbridge,</i>	Edward Phillips,	
	Abijah Prouty,	
<i>Sutton,</i>	Peter Putnam,	
	Welcome Whipple,	
<i>Templeton,</i>	Joseph Davis, Jr.,	
	Moses Leland,	
<i>Upton,</i>	William Legg,	
	Elijah Warren,	

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<i>Uxbridge,</i>	Samuel Read,	6
	Asa Thayer,	104
<i>Warren,</i>	John Moore,	462
<i>Webster,</i>	Solomon Robinson,	32
<i>Westborough,</i>	Otis Brigham,	99
	Abijah Stone,	301
<i>West Boylston,</i>		
<i>Westminster,</i>	Joseph Whitman,	511
	Joseph H. Whitney,	484
<i>Winchendon,</i>	Isaac Morse,	56
	Elisha Murdock,	248
<i>Worcester,</i>	Lewis Chapin,	352
	Simon S. Gates,	250
	Nathan Heard,	153
	William Lincoln,	508
	Stephen Salisbury,	377
	Ichabod Washburn,	100

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<i>Amherst,</i>	Edward Dickinson,	62
	Oliver Dickinson, 2d,	102
<i>Belchertown,</i>	Israel Town,	
<i>Chesterfield,</i>	Timothy A. Phelps,	85
<i>Cummington,</i>	Philander Packard,	232
<i>Easthampton,</i>		
<i>Enfield,</i>	Daniel Ford,	53
<i>Goshen,</i>	Luther Stone,	181
<i>Granby,</i>	Samuel Ayres,	461
<i>Greenwich,</i>	Ira Haskell,	169
<i>Hadley,</i>	Charles P. Phelps,	136
	William Smith,	50
<i>Hatfield,</i>	Justin Wait,	44

<i>Middlefield,</i>	Samuel Smith,	111
<i>Northampton,</i>	Jonathan P. Strong,	122
	Joseph Warner,	385
	Eliphalet Williams,	293
<i>Norwich,</i>		
<i>Pelham,</i>	Joseph Barrows,	182
<i>Plainfield,</i>	Stephen Gloyd,	251
<i>Prepott,</i>	Roswell Allen,	84
<i>South Hadley,</i>	Spencer Moody,	219
<i>Southampton,</i>	William S. Rogers,	82
<i>Ware,</i>	Jason Gorham,	435
	Thomas Snell,	523
<i>Westhampton,</i>	John A. Judd,	283
<i>Williamsburg,</i>	Elisha Tileston,	421
<i>Worthington,</i>	Chauncey B. Rising,	

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<i>Blandford,</i>	Abner Hitchcock,	14
<i>Brimfield,</i>	Samuel Tarbell,	51
<i>Chester,</i>	William Shepard,	38
<i>Granville,</i>	Francis Peebles,	37
<i>Holland,</i>		
<i>Longmeadow,</i>	Calvin Burt,	4
<i>Ludlow,</i>		
<i>Monson,</i>	Horatio Lyon,	4
	Calvin Munn,	2
<i>Montgomery,</i>	Oren Parks,	
<i>Palmer,</i>	William J. Blanchard,	
	James Garwell,	
<i>Russell,</i>	Benjamin Bennet,	
<i>Southwick,</i>	Moses Loomis,	

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<i>Southwick,</i>	Elisha Steer,	320
<i>Springfield,</i>	George Bliss,	
	Elijah Blake,	211
	Orange Chapin,	87
	William Child,	483
	Charles M'Clallen,	
	Sylvester Taylor,	284
<i>Tolland,</i>	George W. Granger,	266
<i>Wales,</i>	Absalom Gardner,	221
<i>Westfield,</i>	Joseph Arnold,	297
	Asa B. Whitman,	378
	Lucius Wright,	131
<i>West Springfield,</i>	Edwin H. Ball,	396
	Josiah Johnson,	341
<i>Wilbraham,</i>	Jesse W. Rice,	97
	William V. Sessions,	331

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<i>Ashfield,</i>	William Bassett,	309
	Friend Knowlton,	316
<i>Bernardston,</i>	Henry W. Cushman,	136
<i>Buckland,</i>	Joseph Griswold,	36
<i>Charlemont,</i>	Joseph Field,	91
<i>Coleraine,</i>	Amos Bordwell,	498
	John Wilson,	308
<i>Conway,</i>	Christopher Arms,	319
<i>Deerfield,</i>	Amos Russell,	376
	Asa Stebbins,	207
<i>Gill,</i>	Eliphalet S. Darling,	460
<i>Greenfield,</i>	Ambrose Ames,	3
	Isaac Barton, Jr.,	193
<i>Hawley,</i>	John Vincent,	16

<i>Heath,</i>	Luther Gale,	535
<i>Leverett,</i>	Horatio N. Watson,	107
<i>Leyden,</i>	Reuben Sheldon,	142
<i>Monroe,</i>	Martin Ballou,	54
<i>Montague,</i>	Martin H. Clapp,	101
<i>New Salem,</i>	Emerson Fay,	397
<i>Northfield,</i>	Samuel C. Allen, Jr.,	466
	Asabel Stebbins,	534
<i>Orange,</i>	Salmon Howard,	239
<i>Rowe,</i>	Solomon Reed,	412
<i>Shelburne,</i>	Theophilus Packard,	177
<i>Shutesbury,</i>	Phineas Hemmenway,	220
<i>Sunderland,</i>	Horace Henderson,	189
<i>Warwick,</i>	Jacob R. Gale,	349
<i>Wendell,</i>	Gardiner Leach,	19
<i>Whateley,</i>	Samuel B. White,	204

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<i>Adams,</i>	John Hall,	20
	Joseph L. White,	39
	Shubael Willmarth,	35
<i>Alford,</i>		
<i>Becket,</i>	Isaac Stevens,	47
<i>Cheshire,</i>	Stephen Northup,	22
<i>Clarksburg,</i>		
<i>Dalton,</i>	Daniel Lawrence,	21
<i>Egremont,</i>	Phaon Truman,	12
<i>Florida,</i>		
<i>Great Barrington,</i>	Jacob Burghardt,	
	George Pynchon,	30
<i>Hancock,</i>	William Hadsell,	15
<i>Hinsdale,</i>	William Hinsdale,	2



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<i>Lanesborough,</i>		
<i>Lee,</i>	Eli Bradley,	401
	Leonard Church,	205
<i>Lenox,</i>	Henry H. Cook,	279
<i>Mt. Washington,</i>	William Wright, Jr.,	274
<i>New Ashford,</i>		
<i>New Marlborough,</i>	Joseph W. Howe,	495
<i>Otis,</i>	Samuel Picket,	228
<i>Peru,</i>	Smith Phillips,	240
<i>Pittsfield,</i>	George W. Campbell,	249
	Solomon L. Russell,	242
<i>Richmond,</i>	Daniel D. Kendall,	114
<i>Sandisfield,</i>	Oliver Bosworth,	492
<i>Savoy,</i>	Melvin Bowker,	195
<i>Sheffield,</i>	Frederic A. Brown,	398
	Ira Curtis,	156
<i>Stockbridge,</i>	William Churchill,	203
	Charles Webster,	409
<i>Tyringham,</i>	Asa Judd,	269
<i>Washington,</i>	John S. Noble,	439
<i>West Stockbridge,</i>	Hubbard Fox,	287
<i>Williamstown,</i>	Jeremiah H. Hosford,	118
	Henry Johnson,	292
<i>Windsor,</i>	Josiah Allen,	473

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<i>Bellingham,</i>	Asa Pickering,	312
<i>Braintree,</i>	Joseph Richards,	144
	Minot Thayer,	47
<i>Brookline,</i>	Thomas Griggs,	434
<i>Canton,</i>	Samuel Capen,	124
	Isaac Horton,	333

<i>Cohasset,</i>	George W. Collier,	152
<i>Dedham,</i>	Joshua Fales,	344
<i>Dorchester,</i>	Elijah Vose,	64
	Marshal P. Wilder,	521
<i>Dover,</i>		
<i>Foxborough,</i>	Silas Ripley,	323
	John Sherman,	42
<i>Franklin,</i>	Nathan Cleaveland,	198
<i>Medfield,</i>	William Peters,	483
<i>Medway,</i>	Eleazer Daniels,	60
	Luther Metcalf,	313
<i>Milton,</i>	Nathaniel Thomas,	533
	Ebenezer G. Tucker,	67
<i>Needham,</i>	Elisha Lyon,	428
<i>Quincy,</i>	William B. Duggan,	503
	James Newcomb,	155
	Lemuel Spear,	246
<i>Randolph,</i>	Zenas French,	244
	Alvan Kidder,	345
	Charles T. Woodman,	403
<i>Roxbury,</i>	Cornelius Cowing,	516
	Ephraim Harrington,	369
	William H. Spooner,	245
	Joseph W. Tucker,	55
	Stephen Williams,	49
<i>Sharon,</i>	Jedediah Morse,	86
<i>Stoughton,</i>		
<i>Walpole,</i>	Joshua Stetson, Jr.,	145
<i>Weymouth,</i>	Silas Canterbury,	538
	Bela Hayward,	119
	Asa Pratt,	164
<i>Wrentham,</i>	Preston Pond,	326
	Silas Metcalf,	536

## COUNTY OF BRISTOL.

<i>Attleborough,</i>	Carlos Barrows,	241
	Jonathan Bliss,	26
	John Daggett,	1
<i>Berkley,</i>		
<i>Dartmouth,</i>	Joseph Gifford,	
	George Kirby,	417
<i>Dighton,</i>	William Peck,	75
<i>Easton,</i>	Nathaniel Guild,	260
	Martin Wild,	202
<i>Fairhaven,</i>	Daniel Davis,	252
	John Stoddard,	263
	Joseph Tripp,	364
<i>Fall River,</i>	George Brightman, 2d,	359
	John A. Harris,	335
	Micah H. Ruggles,	
	Iram Smith,	134
<i>Freetown,</i>	Alden Hathaway, Jr.,	467
<i>Mansfield,</i>	Schuyler Shepard,	197
<i>New Bedford,</i>	Abraham Barker,	458
	Ebenezer N. Chaddock,	282
	Thomas D. Eliot,	332
	Thomas A. Greene,	281
	Robert Hillman,	471
	Leonard Macomber,	380
	Pardon G. Seabury,	150
	Silas Stetson,	69
	William H. Stowell,	162
<i>Norton,</i>	John Crane,	184
<i>Pantrucket,</i>	Elijah Ingraham,	39
	John B. Read,	223

<i>Raynham,</i>	Absalom Leonard,	339
	Enos L. Williams,	15
<i>Rehoboth,</i>	Caleb Cushing,	
	William Marvel, 2d,	57
<i>Seekonk,</i>	Caleb Chaffee,	392
	William Ide,	393
<i>Somerset,</i>	Benjamin G. Chace,	391
<i>Swansey,</i>	Artemas Stebbins,	108
<i>Taunton,</i>	Leonard Hall,	290
	Allen Presbury,	215
<i>Westport,</i>	Nathan C. Brownell,	265
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<i>Abington,</i>	James Ford, Jr.,	191
	Elihu Hobart,	61
	Harvey Torrey,	459
<i>Bridgewater,</i>	John A. Shaw,	22
	Nahum Stetson,	48
<i>Carver,</i>	Joseph Barrows,	327
<i>Duxbury,</i>	Benjamin Alden,	507
	Gershom B. Weston,	520
<i>East Bridgewater,</i>		
<i>Halifax,</i>	Zadock Thompson,	132
<i>Hanover,</i>	Abel G. Duncan,	382
<i>Hanson,</i>	Melzar Sprague,	408
<i>Hingham,</i>	Henry Cushing,	537
	David Fearing,	93
	Thomas Loring,	63
<i>Hull,</i>		
<i>Kingston,</i>	Josiah Holmes,	366
	James N. Sever,	375

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<i>Marshfield,</i>	John Ford, Jr.,	358
<i>Middleborough,</i>	Stilman Benson,	105
	Tisdale Leonard,	137
	Zebulon K. Pratt,	500
	Eliab Ward,	336
<i>N. Bridgewater,</i>	Jesse Perkins,	94
	Albert Smith,	294
<i>Pembroke,</i>	Nathaniel Smith,	234
<i>Plymouth,</i>	Isaac Bartlett,	384
	Jeremiah Farris,	302
	Ezra Leach,	365
	Benjamin Weston,	149
<i>Plympton,</i>	Zaccheus Parker,	317
<i>Rochester,</i>	Zaccheus M. Barstow,	29
	James H. Clark,	429
	Isaac Smith,	432
<i>Scituate,</i>	John Beal,	52
	William James,	406
	Samuel Waterman,	285
<i>Wareham,</i>	Abisha Barrows,	120
	Bartlett Murdock,	415
<i>West Bridgewater,</i>	John E. Howard,	291

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<i>Barnstable,</i>	Daniel Basset,	402
	Nathaniel Hinckley,	167
	Thomas B. Lewis,	407
<i>Brewster,</i>	Josiah Foster,	517
<i>Chatham,</i>	Josiah Kendrick,	525
	Thomas Sparrow,	475
<i>Dennis,</i>	Seth Crowell,	469
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**STANDING COMMITTEES OF THE  
SENATE.**

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**ON THE JUDICIARY.**

**Messrs. Walcott, Kinnicutt, and Morey.**

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**ON MATTERS IN PROBATE AND CHANCERY.**

**Messrs. Ashmun, Kimball, and Pratt.**

---

**ON EDUCATION.**

**Messrs. Carter, Goodrich, and Willard,**

---

**ON AGRICULTURE.**

**Messrs. Whitmarsh, Clark, and Richardson.**

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**ON BILLS IN THE THIRD READING.**

**Messrs. Kinnicutt, Walcott, Ashmun, Kimball, Morey, and King.**

---

**ON ENGROSSED BILLS.**

**Messrs. Hancock, Filley, Pratt, Leighton, Lee, and Little.**

## JOINT STANDING COMMITTEES.

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### ON ACCOUNTS.

- Messrs. Eaton and } *Of the Senate.*  
Perkins, }  
Messrs. Thayer, of Braintree, }  
Griswold, of Buckland, } *Of the House.*  
Tiffany, of Southbridge, }
- 

### ON ROADS AND BRIDGES.

- Messrs. Carter and } *Of the Senate.*  
Boies, }  
Messrs. Bowman, of N. Braintree, }  
James, of Scituate, } *Of the House.*  
Chase, of Salem, }
- 

### ON RAILWAYS AND CANALS.

- Messrs. Child and } *Of the Senate.*  
Gurney, }  
Messrs. Phelps, of Hadley, }  
Edgell, of Framingham, } *Of the House.*  
Richardson, of Boston, }
- 

### ON TOWNS.

- Messrs. Hastings and } *Of the Senate.*  
Whitman, }  
Messrs. Child, of Springfield, }  
Whitney, of Westminster, } *Of the House.*  
Allen, of Danvers, }
- 

### ON CLAIMS.

- Messrs. King and } *Of the Senate.*  
Leighton, }  
Messrs. Andrew, of Salem, }  
Clark, of Boston, } *Of the House.*  
Pickering, of Bellingham, }

## ON PARISHES AND RELIGIOUS SOCIETIES.

- Messrs. Filley and } *Of the Senate.*  
 Meigs, }  
 Messrs. Seabury, of New Bedford, }  
 Burghardt, of G. Barrington, } *Of the House.*  
 Ford, of Enfield, }
- 

## ON THE MILITIA.

- Messrs. Quincy and } *Of the Senate.*  
 Goodrich, }  
 Messrs. Duncan, of Haverhill, }  
 Brimmer, of Boston, } *Of the House.*  
 Ruggles, of Hardwick, }
- 

## ON PUBLIC LANDS.

- Messrs. Blake and } *Of the Senate.*  
 Little, }  
 Messrs. Fairbanks, of Boston, }  
 Bacon, of Bedford, } *Of the House.*  
 Stetson, of Walpole, }
- 

## ON MANUFACTURES.

- Messrs. French and } *Of the Senate.*  
 Brown, }  
 Messrs. Peabody, of Salem, }  
 Southwick, of Lowell, } *Of the House.*  
 Campbell, of Pittsfield, }
- 

## ON FISHERIES.

- Messrs. Marston and } *Of the Senate.*  
 Lane, }  
 Messrs. Swift, of Falmouth, }  
 Hale, of Newbury, } *Of the House.*  
 Atkins, of Provincetown, }



ON BANKS AND BANKING.

- Messrs. Armstrong and } *Of the Senate.*  
 Breed,  
 Messrs. Williams, of Northampton, }  
 Weston, of Duxbury, } *Of the House.*  
 Shaw, of Boston, }

ON MERCANTILE AFFAIRS AND INSURANCE.

- Messrs. Upton and } *Of the Senate.*  
 Allen,  
 Messrs. Motley, of Boston, }  
 Rogers, of Salem, } *Of the House.*  
 Barker, of New Bedford, }

ON PRISONS.

- Messrs. Lee and } *Of the Senate.*  
 Park,  
 Messrs. Jenks, of Nantucket, }  
 Heard, of Worcester, } *Of the House.*  
 Thompson, of Charlestown, }

ON PUBLIC CHARITABLE INSTITUTIONS.

- Messrs. Spofford and } *Of the Senate.*  
 Chandler,  
 Messrs. Vose, of Dorchester, }  
 Bradburn, of Nantucket, } *Of the House.*  
 Webster, of Stockbridge, }

ON THE LIBRARY.

- Messrs. Willard, }  
 Quincy and } *Of the Senate.*  
 Blake,  
 Messrs. Davis, of Boston, }  
 Shaw, of Eastham, } *Of the House.*  
 Grosvenor, of Methuen, }

**STANDING COMMITTEES**  
OF THE  
**HOUSE OF REPRESENTATIVES.**

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**ON THE JUDICIARY.**

Messrs. Bliss, of *Springfield*, Lincoln, of *Worcester*, Mitchell, of *Boston*, Russell, of *West Cambridge*, Daggett, of *Attleborough*, Rising, of *Worthington*, Stickney, of *Lynn*.

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**ON MATTERS OF PROBATE AND CHANCERY.**

Messrs. Kinsman, of *Newburyport*, Reed, of *Rowe*, Stevens, of *Andover*, Ward, of *Middleborough*, Cushing, of *Hingham*, Whitney, of *Harvard*, Bacon, of *Sandwich*.

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**ON EDUCATION.**

Messrs. Shaw, of *Bridgewater*, Greene, of *New Bedford*, Salisbury, of *Worcester*, Packard, of *Shelburne*, Greenleaf, of *Bradford*, Cushman, of *Bernardston*, Choate, of *Essex*.

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**ON AGRICULTURE.**

Messrs. Buckingham, of *Cambridge*, Field, of *Charlemont*, Stebbins, of *Deerfield*, Wilder, of *Dorchester*, Noyes, of *Newbury*, Gardiner, of *Wales*, Pynchon, of *Great Barrington*.

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**ON FINANCE.**

Messrs. Gray, of *Boston*, Brownell of *Westport*, Fiske, of *Waltham*, Tripp, of *Fairhaven*, Ingraham, of *Pawtucket*, White, of *Adams*, Snell, of *Ware*.

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**ON ELECTIONS.**

Messrs. E. Dickinson, of *Amherst*, Wheeler, of *Bolton*, Allen, of *Northfield*, Nourse, of *Lowell*, Hinckley, of *Barnstable*, Bradley, of *Tisbury*, Fearing, of *Hingham*.

ON BILLS IN THEIR THIRD READING.

Messrs. Eliot, of *New Bedford*, Tarbell, of *Pepperell*, Fay, of *Southborough*, Stetson, of *Bridgewater*, Tucker, of *Roxbury*, Brooks, of *Princeton*, Stoddard, of *Fairhaven*.

ON ENGROSSED BILLS.

Messrs. Morss, of *Newburyport*, Davis, of *Fairhaven*, Stone, of *Beverly*, J. G. Thurston, of *Lancaster*, Stowell, of *New Bedford*, Duggan, of *Quincy*, Evans, of *South Reading*.

ON COUNTY ESTIMATES.

Messrs. Loring, of *Hingham*, Perkins, of *North Bridgewater*, Buttrick, of *Concord*, Sheldon, of *Leyden*, Safford, of *Beverly*.

ON THE PAY ROLL

Messrs. Eveleth, of *Boston*, Vincent, of *Hawley*, Curtis, of *Sheffield*, Emerson, of *South Reading*, Smith, of *North Bridgewater*.

ON CHANGE OF NAMES.

Messrs. Clapp, of *Montague*, Boutelle, of *Fitchburg*, Thomas, of *Milton*, Crowell, of *Dennis*, Flint, of *Reading*.

ON LEAVE OF ABSENCE.

Messrs. Towne, of *Belchertown*, Briggs, of *Nantucket*, Beal, of *Scituate*, Lawrence, of *Dalton*, Cowing, of *Roxbury*.

ON PUBLIC BUILDINGS.

Messrs. Brooks, of *Cambridge*, Swallow, of *Boston*, Chamberlain, of *Salem*, Heard, of *Ipswich*, Sargent, of *Gloucester*.

## MONITORS OF THE HOUSE.

1st Division,	.	Mr. Brooks, of <i>Cambridge</i> .
2d	" . .	Mr. Hinckley, of <i>Barnstable</i> .
3d	" . .	Mr. Campbell, of <i>Pittsfield</i> .
4th	" . .	Mr. Swasey, of <i>Lynnfield</i> ,
5th	" . .	Mr. Richards, of <i>Braintree</i> .
6th	" . .	Mr. Cushman, of <i>Bernardstown</i> .
7th	" . .	Mr. Greenleaf, of <i>Bradford</i> ,
8th	" . .	Mr. Stanwood, of <i>Gloucester</i> .
9th	" . .	Mr. Duncan, of <i>Hanover</i> .





A

# S E R M O N

DELIVERED BEFORE

HIS EXCELLENCY EDWARD EVERETT,

GOVERNOR,

HIS HONOR GEORGE HULL,

LIEUTENANT GOVERNOR,

THE HONORABLE COUNCIL,

AND

THE LEGISLATURE OF MASSACHUSETTS,

ON THE

ANNIVERSARY ELECTION,

JANUARY 2, 1839.

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BY MARK HOPKINS, D. D.

*President of Williams College.*

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**Boston:**

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1839.





**Commonwealth of Massachusetts.**

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SENATE, JANUARY 3, 1893.

*Ordered, That Messrs. Filley, Quincy, and Kimball, be a Committee to present the thanks of the Senate to the Rev. MARK HOPKINS, D. D. for the discourse yesterday delivered by him, before the Government of the Commonwealth, and to request a copy thereof for publication.*

Attest,

CHARLES CALHOUN, *Clerk.*



# S E R M O N .

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Acts v. 29.

**WE OUGHT TO OBEY GOD RATHER THAN MAN.**

MAN was made for something higher and better, than either to make, or to obey, merely human laws. He is the creature of God, is subject to his laws, and can find his perfection, and consequent happiness, only in obeying those laws. As his moral perfection, the life of his life, is involved in this obedience, it is impossible that any power should lay him under obligation to disobey. The known will of God, if not the foundation of right, is its paramount rule, and it is because human governments are ordained by him, that we owe them obedience. We are bound to them, not by compact, but only as God's institutions for the good of the race. This is what the Bible, though sometimes referred to as supporting arbitrary power, really teaches. It does not support arbitrary power. Rightly understood, it is a perfect rule of duty, and as in every thing else, so in the relations

of subjects and rulers. It lays down the true principles, it gives us the guiding light. When the general question is whether human governments are to be obeyed, the answer is, "He that resisteth the power, resisteth the ordinance of God." "The powers that be are ordained of God." But when these powers overstep their appointed limits, and would lord it over the conscience, and come between man and his maker, then do we hear it uttered in the very face of power, and by the voice of inspiration, no less than of indignant humanity, "We ought to obey God rather than men."

It has been in connexion with the maintenance of this principle, first proclaimed by an Apostle of Christ eighteen hundred years ago, that all the civil liberty now in the world has sprung up. It is to the fearless assertion of this principle by our forefathers, that we owe it that the representatives of a free people are assembled here this day to worship God according to the dictates of their own consciences, to seek to Him for wisdom in their deliberations, and to acknowledge the subordination of all human governments to that which is divine.

Permit me then, as appropriate to the present occasion, to call the attention of this audience,

1st. To the grounds on which all men are bound to adhere to the principle stated in the text ; and

2d. To the consequences of such adherence, on the part, both of subjects, and of rulers.

I observe, then, that we ought to obey God rather than men, because human governments are comparatively so limited and negative in their bearing upon the great purposes, first, of individual, and second, of social existence.

The purposes for which man was made, must evidently involve in their accomplishment, both his duty and his happiness ; and nothing can be his duty which would contravene those purposes. Among them, as already intimated, the highest is the moral perfection of the individual ; for as it is by his moral nature that man is distinguished from the inferior animals, so it is only in the perfection of that nature, that his perfection, as man, can consist. As absolute perfection can belong only to God, that of man must be relative, that is, it must consist in the proper adjustment of relations, and especially in the relation of his voluntary actions to the end for which God designed him. This is our idea of perfection, when we affirm it of the works of man. It involves, mainly, such a relation of parts as is necessary to the

perfect accomplishment of the end in view. A watch is perfect when it is so constructed that its motions exactly correspond in their little revolutions with those of the sun in the heavens ; and man is perfect when his will corresponds in its little circle of movement with the will of God in heaven. This correspondence, however, is not to be produced by the laws of an unconscious mechanism, but by a voluntary, a cheerful, a filial co-operation. It is this power of controlling his faculties with reference to an ultimate end, of accepting or rejecting the purpose of his being, as indicated by God in the very structure of his powers, and proclaimed in his word, that contradistinguishes man from every inferior being, and gives scope for what is properly termed, character. Inferior beings have qualities by which they are distinguished, they have characteristics, but not *character*, which always involves a moral element. A brute does not govern its own instincts, it is governed by them. A tree is the product of an agency which is put forth through it, but of which it is not conscious, and which it does not control. But God gives man to himself, and then sets before him, in the tendency of every thing that has unconscious life towards its own perfection, the great moral lesson that nature was intended to teach.

He then causes every blade of grass, and every tree, to become a preacher and a model, calling upon him to put forth his faculties, not without law, but to accept the law of his being, and to work out a character and a happiness in conformity with that. It is, as I have said, the power which man has to accept or reject this law of his being, the great law of love, that renders him capable of character, and it is evidently as a theatre, on which this may be manifested, that the present scene of things is sustained. Not with more certainty do the processes of vegetation point to the blossoms and the fruit as the results to which they conspire, than does every thing in the nature and condition of man indicate the formation of a specific, voluntary, moral character, as the purpose for which God placed him here. But this purpose is not recognized at all by human governments, and we have only to observe the limited and negative agency which they incidentally bring to bear upon it, to see how insignificant must be their claims when they would come into conflict with those of the government of God.

I observe then, first, that human governments regard man solely as the member of a community; whereas it is chiefly as an individual, that the government of God regards him. Isolate a man

from society, take him beyond the reach of human government, and his faculties are not changed. He is still the creature of God, a dweller in his universe, retaining every thing he ever possessed that was noble in reason, or grand in destiny, and in his solitude, where yet he would not be alone, the government of God would follow him, and would require of him such manifestations of goodness as he might there exercise—the adoration of his Creator, resignation to his will, and a temperate and prudent use of the blessings within his power. Indeed, so far as responsibility is concerned, the divine government considers man, whether in solitude or in a crowd, solely as an individual, and produces an isolation of each as complete as if he were the only person in the universe. God knows nothing of divided responsibility, and whether acting alone, or as a member of a corporation or of a legislature, every man is responsible to him for just what he does as a moral being, and for nothing more. The responsibility of each is kept disentangled from that of all others, and lies as well defined in the eye of God, as if that eye were fixed upon him alone. The kingdom of God is within man, and there it is, in the secret soul of each, that the contest between light and darkness, between God and Satan is going on,



and in the struggle, in the victory or the defeat, he who walks the city is as much alone as the hermit in his cell. It is over the thoughts of man, his affections, his passions, his purposes, which mock at human control, that the government of God claims dominion; it is with reference to these, and not to the artificial index of appearances which we set to catch the eye of the world, that the register of Heaven is kept. On the other hand, how very few of the moral actions of man can human government reach, how imperfectly can it reach even these! It is only of overt acts, those which it can define, and which can be proved before a human tribunal, that it can take cognizance; and its treatment even of these can never be adjusted to the varying shades of guilt. It has no eye to reach the springs of action. It may see the movements of the machinery above, perplexed, and apparently contradictory; but it cannot uncover the great wheel, and look in upon the simple principle which makes character, and sets the whole in motion.

But I observe again, that human governments are not only thus limited, but are also chiefly negative in their influence upon the formation of individual character. There is, indeed, a positive and widely pervading moral influence connected

with the character, and station, and acts, of those who are in authority. This cannot be too prominently stated, the responsibility connected with it cannot be too carefully regarded ; still this influence is entirely incidental, and is the same in kind with that exerted by any distinguished private individual. Human governments have also positive power to furnish *facilities*, as distinguished from *inducements*. They can authorise and guard the issue of paper money, to give facilities to men of business ; they can lay down rail-roads, thus opening facilities to the spirit of enterprise, and calling out the neglected resources of the State ; they can too, and our fathers did it, construct and keep in repair the *rail-roads of the mind*, thus giving facilities to the poorest boy in the glens of the mountains to come out and be an honor to his country. Still, human government is chiefly a system of restraint for the purpose of protection. Its object is to give equal protection to all in using their faculties as they please, provided they do not interfere with the rights of others. It does not propose to furnish inducements, but to enable men to live quiet and peaceable lives, while they act in view of the great inducements furnished by the government of God.

In saying this, I do not undervalue the benefits

*Conferred by human governments, but only assign them their true place. The office performed by them is indispensable. They are the enclosure of the field, without which certainly nothing could come to maturity ; but they are not the soil and the rain, and the sunshine, which cause vegetation to spring up. These are furnished by the government of God, which is not only a system of restraint and protection, but also, and chiefly, of inducements to excellence. Into the ear of the humblest of its subjects it whispers, as it points upward, "Glory," "Honor," "Immortality," "Eternal Life." It is parental in its character, makes us members of a family, gives us objects of affection, and by its perfect standard of moral excellence, and the character of God which it sets before us, it purifies and elevates the mind. Without a God to whom he is related and accountable, man has neither dignity nor hope. Without God, the universe has no cause, its contrivances indicate no intelligence, its providence no goodness, its related parts and processes no unity, its events no convergence to one grand result, and the glorious spectacle presented in the earth and the heavens, instead of calling forth admiration and songs, is an enigma perplexing to the intellect, and torturing to the heart. Seen in its connexion with*

God, the universe of matter is as the evening cloud that lies in the sunlight, radiant, and skirted with glory ; without him it is the same cloud cold and dark when that sunlight is gone. Without God, man is an orphan ; he has no protector here, and no Father's house in which he may hope for a mansion hereafter. His life is at his own disposal, and has no value except in relation to his personal and present enjoyment.

On the other hand, as the idea of God is received, and his relations to the universe are intimately felt, unity and harmony are introduced into our conceptions of that which is without, and acquiescence and hope reign within. Nature, as more significant, becomes more a companion. Her quiet teachings and mute prophecies, her indexes pointing to the spirit land, instead of being felt as a mockery, are in accordance with the best hopes, and the revealed destiny of man. Life, too, assumes a new aspect. A common destiny is set before all, and the consciousness of it runs as a thread of sympathy through the race. The poor man is elevated when he sees that the principle of duty may be tried and strengthened in his humble sphere, as well as in those that are higher, and his labor becomes a cheerful service done with good will from the heart. Every duty to man becomes

*doubly sacred as due* also to God, and the humblest life, pursued from a conscientious regard to his will, is *invested with an unspeakable dignity*. It is indeed, I may remark, this view of life that furnishes the *only possible ground of equality*. Men are upon an equality only as they are equally upon trial in the sight of God, and nothing will ever reconcile them to the unavoidable inequalities of the present state, but the consciousness that their circumstances were allotted to them by Him who best knew what trials they would need, and whose equal eye regards solely the degree in which their moral nature is improved by the trial. When this is felt, there is, under all circumstances, a basis for dignity without pride, for activity without restlessness, for diversity of condition without discord.

And not only the aspect of life in the relations of men to each other, but its end also is changed. The moral nature assumes its true position, and, acting in the presence of a perfect law as its standard, and of a perfect gospel as its ground of hope, the idea of true liberty dawns upon the mind. This consists in the coincidence of the affections and inclinations with correct principle. It is only when the internal constitution of a reasonable being is in harmony with the law under which he

acts, that he is conscious of no restraint, and knows what true freedom is. The chief value of what is commonly called liberty, consists in the opportunity it gives to use our faculties without molestation for the attainment of this. This is that glorious liberty of the sons of God, of which the Scriptures speak. It is not a mere freedom from restraint which may be abused for the purposes of wrong-doing ; and become a curse, merely making the difference between a brute enclosed and a brute at large ; but it is, in its commencement, the resolute adoption of the law of conscience and of God as the rule of life ; in its progress, a successful struggle with whatever opposes this law ; in its completion, the harmonious and joyful action of every power in its fulfilment. This is the only liberty known under the government of God. He who knows it not is the slave of sin. He who struggles not for it, is in a contented bondage of which physical slavery is but a feeble type. The perfection of this liberty is only another name for moral perfection, which, as I have said, is the great end of the individual ; and as the direct motives and means for the attainment of this are furnished only by the government of God, it is evident that “ We ought to obey God rather than men.”

**Having thus spoken of the effect of human government upon man in his individual character, I now proceed to inquire, whether it is equally limited and negative in its bearing upon him in his social condition.**

And here I remark, that it is only incidentally that human government is necessary to man as a social being at all. Society was before government, and if man had retained his original state, it might, perhaps, have existed without it till the end of time. Man is constituted by his Creator a social being; he has faculties to the expansion and perfection of which society is requisite, but he has no faculties the necessities of which constitute him a political being. There must be politicians, just as there must be farmers, and merchants, and physicians, that they and others may enjoy social life; but social life is corrupted when politics enter largely into it. It is not sufficiently noticed, that it is through social institutions and habits far more than through political forms, that the happiness or misery of man is produced. It was not from the oppressions of the government, but from a corrupted social state, that the prophet of old wished to flee into the wilderness. It was because his people were all adulterers, an assembly of treacherous men, because every brother

would supplant, and every neighbor would walk with slanders. Such a state of things may exist under any form of political organization. It may exist under ours. Men may be loud in their praise of republican forms, and yet be false, and unkind, and litigious; they may be indolent, and profane, and sabbath breakers, and gamblers, and licentious, and intemperate. Yes, and there may be neighborhoods of such men, and the place where they assemble nightly, hard by a banner that creaks in the wind, may be the liveliest image of hell that this earth can present. I certainly know, and my hearers are fortunate if they do not know, neighborhoods in this land of liberty and equality, where the only use made of liberty is to render families and society wretched, and where the only equality, is an equality in vice and social degradation, which no man is permitted even to attempt to rise above without constant annoyance. Better, far better, is family affection, and kind neighborhood under a regal, or even a despotic government, than such liberty as this.

Government then is not an end, but a means. Society is the end, and government should be the agent of society, to benefit man in his social condition. The extent to which it can do this will depend on its form, and the power with which it



is entrusted. **Absolute power, which should be used for this purpose, is generally abused. Considering itself as having interests distinct from those of the people, it too often seeks to keep them in a state of degradation, and to appropriate to itself the largest possible share of those blessings which ought to be equally diffused.** “Get out of my sunlight,” said Diogenes to Alexander the Great : “Get out of my sunlight”—cease to obstruct the free circulation of blessings intended for all, might the people say under any arbitrary form of government ever yet administered. Still, such a government, when under the direction of wisdom and benevolence, has power to produce great social and moral revolutions for the good of mankind. Such a revolution was commenced by Peter the Great, and his measures, though necessary, were such as none but an absolute monarch could have adopted. Aside from christianity, the judicious exercise of such a power is the only hope of a people debased beyond a certain point. The King of Prussia can maintain a better and more efficient system of schools, than any republican government. He can provide qualified teachers, and can compel the children to attend.

*But when, as in this country, government is the direct agent of society, when it is so far controlled*

by the people as to secure the majority at least from oppression, being merely an expression of the will of that majority, it can have no power to produce moral and social reformatations. Laws do not execute themselves, and in such a state of things they cannot be effectually executed if the violation of them is upheld by public sentiment. In such a case, when vices begin to creep in, and the tendency of things is downwards, we must have a force different from that of the government; we must have *moral* power. Here religion comes in, and must come in, or "the beginning of the end" has come. The intellect must be enlightened, and the conscience quickened, and moral life infused into the mass; the good and the evil must commingle in free conflict, and public sentiment must be changed. When this is done, when patriotism, and philanthropy, and religion, have caused an ebb-tide in the flood of evil that was coming up over the land, then government may come in, not to carry forward a moral reformation by force, but to erect a barrier against the return of that tide. It can secure what these agents have gained. It can put a shield into the hands of society, with which it can, if it pleases, protect itself against that selfishness and malignity which always lurk in its borders, and which moral

influence cannot reach. If, for example, polygamy were established among us as it is among the Turks, a government like ours could do nothing for its removal. But religion could awaken a sense of obligation, and statistics could point out the number of poor women and uneducated children thrown by it for support mainly upon those who had pledged themselves to be the husband of one wife, and christian and philanthropic effort might show that it was injurious to individuals, and families, and the state ; and then a law might be passed, as there has been, to defend society against this evil.

This inefficacy of our government to produce moral and social reformations should be well understood, because it throws the fearful responsibility of maintaining our institutions directly upon the people, where it must rest. A government originating in society, can have but slight ground to stand on in resisting its downward tendency. That there is in society such a tendency, all history shows. As nations have become older, they have invariably become more corrupt. They have never reached that point in general morality at which men cease to corrupt each other by associating together. Such a tendency, not counteracted, must be fatal to republican governments,

for republican government is self-government, and as the internal law becomes feeble, external force must be increased ; and accordingly we find that every people hitherto, have either been under regal power from the beginning, or have, in time, reached a point in corruption, when that power became necessary. Republican government then, is not so much the cause of a good social state, as its sign. It can never be borne up, with its stars and stripes floating, upon the surface of a society that is not strongly impregnated with virtue. Take this away, and it goes down by its own weight, and the beast of tyranny, with its seven heads and ten horns, comes up out of the troubled waters. Here is the turning point with us. All depends upon the influences that go to form the character of our people. Those who control these influences will really govern the country. To this point we turn our eyes anxiously. At this point we look to legislators to stand in their lot, and do what is appropriate to their station. At this point we look especially to fathers and mothers, the guardians of domestic virtue.—Those waters will be sweet that are fed by sweet springs. We look to christian ministers, to enlightened teachers, to patriotic authors and editors, to every good citizen. If there ever was a country in which all these

were called upon to do their utmost, this is that country ; if there ever was a government that was called upon to second in every proper way the efforts of these, this is that government. To all these we look ; but our trust is only in the influences they may bring to bear from the blessed gospel of Christ, from the government of God. " We ought to obey God rather than men."

I have thus shown, as fully as the time would permit, though far too briefly to do justice to the subject, the grounds on which we ought to obey God rather than men. These are to be found in the relation of the divine, and of human government respectively, to the ends of individual, and of social existence. But the occasion on which the text was uttered, a subject having directly refused obedience to rulers lawfully constituted, will lead us to consider the effects of the principle of the text when acted upon by men in those relations in which civil liberty is directly involved—in the relations of subjects and of rulers. What then will be the effect of an adherence to this principle on the part of subjects, as such ?

There is a tendency in irresponsible power to accumulate. It first gains control over property, and life, and every thing from which a motive to

resistance based on the interests of the present life, could be drawn. But it is not satisfied with this. Nothing avails it so long as there is a Mor-decai sitting at the King's gate that does not rise up and do it reverence. It must also control the conscience, and make the religious nature subservient to its purposes. Accordingly, the grand device of the enemies of civil liberty, has been so to incorporate religion with the government, that all those deep and ineradicable feelings which are associated with the one, should also be associated with the other, and that he who opposed the government should not only bring upon himself the arm of the civil power, but also the fury of religious zeal. The most melancholy and heart-sickening chapter in the history of man, is that in which are recorded the enormities committed by a lust of power, and by malignity, in alliance with a perverted religious sentiment. The light that was in men has become darkness, and that darkness has been great. The very instrument appointed by God for the deliverance and elevation of man, has been made to assist in his thralldom and degradation. When christianity appeared, the alliance of religion with oppressive power was universal. In such a state of things, there seemed no hope for civil liberty but in bringing the conscience out

from this **unholy alliance**, and putting it in a position in **which it must** show its energies in opposition to **power**. This Christianity did. It brought the conscience to a point where it not only might resist human governments, but where, as they were then exercised, it was compelled to resist them. This appeared when the text was uttered, and there was then a rock raised in the ocean of tyranny which has not been overflowed to this day. The same qualities which make the conscience so potent an ally of power, must, when it is enlightened by a true knowledge of God and of duty, and when immortality is clearly set before the mind, make it the most formidable of all barriers to tyranny and oppression.

By thus bringing the moral nature of man to act in opposition to power, and by giving him light, and strength, and foothold, to enable him to sustain that opposition, christianity has done an inestimable service, and has placed humanity at the only point where its highest grandeur appears. At this point, sustained by principle, and often in the person of the humblest individual, it bids defiance to all the malice of men to wrest from it its true liberty. It bids tyranny do its worst, and though its ashes may be scattered to the winds, it leaves its startling testimony, and the inspiration of

its great example to coming times. The power to do this, christianity alone can give. No other religion has ever so demonstrated its evidences to the senses, and caused its adaptations to the innermost wants of the soul to be felt, as to enable man to stand alone against the influence of whatever was dear in affection, and flattering in promises, and fearful in torture. Other religions have had their *victims*, who have been led, amidst the plaudits of surrounding multitudes, to throw themselves under the wheels of a system already established ; but not their *martyrs*, who, when duty has permitted it, have fled to the fastnesses of the mountains ; and when it has not, have stood upon their rights, and contested every inch of ground, and met death soberly and firmly, only when it was necessary. When this has been done by multitudes it has caused power to respect the individual, to respect humanity ; and while christianity was wading through the blood of ten persecutions, it was fighting more effectually than had ever been done before, the battles of civil liberty. The call to obey God rather than men met with a response, and it is upon this ground that the battle has been opened in every case in which civil liberty now exists. It is upon this ground alone that it can be maintained



I deem it of great importance that this point should be fully and often presented, because it is vital, and because there are constant attempts made to obscure it. Whatever elevates the individual, whatever gives him worth in his own estimation and that of others, whatever invests him with moral dignity, must be favorable both to pure morality and to civil liberty. Hence it is that these are both incidental results of christianity. They are not the gifts which she came to bestow—these are life and immortality. They are not the white raiment in which her followers are to walk in the upper temple ; but they are the earthly garments with which she would clothe the nations—they are the brightness which she leaves in her train as she moves on towards heaven, and calls on men to follow her there. These belong to her alone. Infidels may filch her morality, as they have often done, and then boast of their discoveries. But in their hands that morality is lopped off from the body of faith on which it grew, and produces no fruit. They may boast, as they do, of a liberty which they never could have achieved. But under its protection they advance doctrines and advocate practices which would corrupt it into license. Their only strength lies in endeavoring, in the sacred name of liberty, to corrupt the virtuous, and

to excite the hatred of the vicious against those restraints without which liberty cannot exist, and society has no ground of security. "Promising liberty to others, they are themselves the servants of corruption." Liberty cannot exist without morality, nor general morality without a pure religion.

The doctrine thus stated is fully confirmed by history. The reformation by Luther was made on strictly religious grounds. He found an opposition between the decrees of the Pope and the commands of God, and it was the simple purpose, resolutely adhered to, to obey God rather than men, that caused Europe to rock to its centre. In the train of this religious reformation civil liberty followed, but became settled and valuable only as religious liberty was perfected. It was every where on the ground of conscience towards God that the first stand was taken, and in those countries where the struggle for religious liberty commenced but did not succeed, as in Spain and Italy, civil liberty has found no resting place for the sole of her foot to this day. It is conceded even by Hume that England owes her civil liberty to the Puritans, and the history of the settlement and progress of this country as a splendid exemplification of the principle in question, needs but to be mentioned here.

*In speaking thus of the resistance of christian subjects to the government, perhaps I should guard against being misunderstood. In no case can it be a factious resistance. It cannot be stimulated by any of the ordinary motives to such resistance—by discontent, or passion, or ambition, or a love of gain. In no case can it show itself in the disorganizing, the aggressive, and in a free government, the suicidal spirit of mobs. Christians have in their eye a grand and a holy object, and all they wish is to go forward, without violating the rights of others, to its attainment. In so doing they set themselves in opposition to nobody, but merely exercise an inalienable right, and if others oppose them, they must still go forward and obey God, be the consequences what they may.*

We will now consider, as was proposed, the effect of an adherence to the principle of the text on the part of rulers. This becomes appropriate from the peculiar form of our government, and the relation which the rulers hold to the people. Rulers have indeed, in all countries, need to be exhorted to obey God, but when their will is supreme, and their power is independent of the people, there can be no propriety in exhorting them to obey God rather than men. In this country, however, this principle needs to be enforced upon

legislators and rulers quite as much as upon the people, perhaps even more. It is at this point, if I mistake not, that we are to look for the danger peculiar to our institutions through those in authority. In other countries the danger is from the accumulation and tyrannical use of power. With us, limited as is the tenure of office, there is little danger of direct oppression. The danger is that those who are in office, and those who wish for it, will, for the sake of immediate popularity, lend the sanction of their names to doctrines and practices, which, if carried into effect, must destroy all government. How is it else that mobs should often escape with so little rebuke? How is it else that we hear such extravagant and disorganizing doctrines maintained in regard to the rights of a majority respecting property, and their power to set aside any guaranties of former Legislatures? Certainly the people are the fountain of power. They establish the government, they have a right to alter it; but when it is established, the state becomes personified through it, and its acts are to be consistent. When it is established, it is a government, it has authority, it becomes God's institution, and those who administer it are to obey God rather than men. Wo to this country, when the people shall become to those in place, the

*object of adulation* and of an affected idolatry. Wo to this country, when the people shall cease to reverence the government as the institution of God because it is established through them ; when they shall suppose that it is in such a sense theirs, that they can supersede its acts in any way except by constitutional forms.

There is also another reason why the principle of the text ought to be especially regarded by the rulers of this country. So far as a nation can be considered and treated as a moral person, its character must be indicated by the acts of its rulers. Accordingly, we find that under every form of government, God has made nations responsible, as in the natural course of things they evidently must be, for what is done by their rulers. But if this is so in monarchical governments, where the agency of the people is so little connected with public acts, much more must it be so in one like ours. Here the rulers represent the people more immediately. They indicate in the eyes of the world, the moral condition of the people, and hence the peculiar responsibility of those who act under the oath of God in making and administering the laws of a representative government. If it can ever be required of God to vindicate his administration by the treatment of any people, it

must be of one whose government is thus administered.

I observe then that the principle of the text should be adopted by rulers, because it furnishes the only broad and safe basis of political action. The adoption of this principle I consider the first requisite of a wise, in opposition to a cunning and temporizing statesman. Statesmanship, as distinguished from that skilful combination of measures which has for its object personal advancement, consists very much in a perception of the connexion there is between the prosperity of states, and the accordance of their laws and social institutions with the laws of justice, and benevolence, and temperance, which are the laws of God. The laws of God are uniform. The general tendencies which he has inwrought into the system will take effect, and nothing, not shaped in accordance with these can stand. Now it is an attempt to evade the effect of these tendencies by expedients in particular instances and for the sake of particular ends, that has been called statesmanship; while he only is the true statesman who sees what these tendencies are, and shapes his laws and institutions in accordance with them. The mere politician, if I may so designate him, perceives the movements which take

place in the **different** parts of society relatively to each other, **and is** complacently skilful in adjusting them to **his** purposes, but he fails to see that **general movement** by which the whole is drifted on together, **and** which is bearing society to a point where **elements** that he had not dreamed of will be called into action, and where his petty expedients will become in a moment, but as the barriers of **sand** which the child raises upon the *beach*, when the tide begins to rise.

“I tremble for my country,” said an American statesman, in a sentence, which, though awfully ominous in the connexion in which it was uttered, does equal honor to his head and his heart, “I tremble for my country when I remember that God is just.” In that sentence are involved the principles of that higher statesmanship before which the expedients of merely expert men dwindle into nothing. He knew not how, or where, or when, the blow might fall; but he knew that there was always a joint in the harness of injustice, where the arrow of retribution, though it might seem to be speeding at a venture, would surely find its way. The higher movements of Divine Providence include the lower. Sooner or later all particular, and for a time apparently anomalous cases are brought under its general rules, and he has

read the history of the past with little benefit, who has failed to see how the giant machinery of that Providence, in the intermediate spaces of which there is ample room for the free play of human agency, takes up the results of that agency as they are wrought out, and applies them to the execution of its own uniform laws, and the accomplishment of its own predicted purposes. These purposes, as declared by those divine records whose prophecies have now become history, were often such as no human sagacity, looking merely at second causes, could have anticipated, such as no human power then existing could have effected. Still, they were wrought out in conformity with that higher, and uniform, and all-encompassing movement with reference to which he who stands at the helm should guide the state, but to ascertain which, he must not take his bearings from the shifting headlands of circumstances, but must lift his eye to those eternal principles which abide ever the same. On this subject there is written upon the walls of the past a lesson for statesmen that needs no interpreter. Look at Babylon. Who is it that stands before its walls, and utters its doom? It is a despised Jew. And who is he that walks in pride upon those walls, and as he points to that mighty city as the centre of civiliza-



tion and power, as combining every advantage of climate and of commerce, mocks at that doom? It is a politician of those days. The voice of the prophet is uttered, and it seems to pass idly upon the wind. The eye of sense sees no effect. No clouds gather, no lightnings descend. But that voice was not in vain. The waters of desolation heard it in their distant caves, and never ceased to rise till they had whelmed palace and tower and temple in one undistinguished ruin. Even now that voice abides there, and hangs as a spirit of the air over that desolation, and the Arabian hears it, warning him not to pitch his tent there, *and the wild beast of the desert and the owl and the satyr hear it, and come up and dwell and dance there.* Look at Jerusalem. Who is he that stands upon mount Olivet and weeps as he looks upon the city, and assigns, as the cause of his tears, that he would often have gathered her children together as a hen gathereth her chickens under her wings, but she would not? Ah! what political Jew would have thought of *that*! He would have turned his attention to the purposes of governors and the intrigues of courts. Into his estimate of the causes that might affect the prosperity of Jerusalem, the moral temper of the nation as indicated by its rejection of Jesus of

Nazareth, would not have entered. And yet, it was from this rejection, even in the way of natural consequence, from the want of those moral qualities which only a regard to his teachings could have produced among them, that the destruction of the Jews resulted. Nothing else could have destroyed their fool-hardy confidence in God, or have allayed those fiendish passions which led contending factions to fill the streets of the city with dead bodies even in the midst of the siege. But they would not have his spirit ; they would not have him to reign over them, and we know that from the moment the words dropped from his lips, " Your house is left unto you desolate," that was a doomed city, and no political skill could have deferred the horrors of a siege and of a final overthrow, such as was not from the beginning of the world, no, nor ever shall be. And not only from Babylon and Jerusalem, but from the grave of every nation buried in antiquity, from Nineveh, and Tyre, and Edom, and Egypt, there comes a voice calling upon rulers to be " just, ruling in the fear of God." The true cause of their destruction was the attitude which they assumed towards the will, and worship, and people of God.

It is from these moral causes, between which and the result there is no immediate, nor, to the

superficial eye, perceptible connexion, that I fear most for the stability of our institutions. It is when the sun is shining most brightly, and the face of the sky shows, it may be, not a single cloud, that the elements of the tornado are ascending most rapidly ; and it is when men are in prosperity and in fancied security that they become presumptuous, and that a disastrous train of causes is silently put in motion, as resistless as the tornado. Upon this point of security, the eye of the true statesman is fixed. It is here that he sees the danger and provides against it ; while the mere politician knows nothing, and sees nothing, till he begins, when it is too late, to see the lightnings, and hear the thunders of embodied wrath.

Can, then, the rulers of this country, in disregard of the warnings of all past time, with a full understanding of the claims and of the controlling agency of the great moral principles of God's government, go on in obedience to men rather than God, and make laws in disregard, or defiance of his will ? If so, then, from the reciprocal influence of rulers and people, our experiment of self-government would seem to be hopeless. Then *must* God scourge this people as he has scourged others. Then are the untoward symptoms of the present time, but as the white spot that shows the

leprosy. Then will the altar of liberty decay, and the fire upon it will go out, and there will be heard by those who watch in her temple, as of old in the desecrated temple of God, the voice of its presiding spirit saying, "Let us go hence," and that temple, towards which the eyes of the nations were turned with hope, shall become the haunt of every unclean thing, and shall only wait the hand of violence to leave not one stone upon another that shall not be thrown down. In view of such consequences, I cannot but feel that the solemn words of our Saviour are as applicable to Legislators and rulers in their public, as in their private capacity. "And I say unto you, my friends, be not afraid of them that kill the body, and after that have no more that they can do. But I will forewarn you whom ye shall fear: Fear him which after he hath killed, hath power to cast into hell, yea I say unto you, Fear him."

To His Excellency the Governor, these sentiments are addressed, as putting him in remembrance, as he stands upon the threshold of a new official year, of that which ought ever to be uppermost in the mind of the Chief Magistrate of a Christian people, of the paramount authority of God, and of the necessity there is that all human

legislation should coincide with the principles of his government. It is a great and a sacred trust which the people of this Commonwealth commit to their Chief Magistrate, and they expect it will be used in the fear of God, and for the good of this whole people. That trust is in tried hands, and we rejoice in the belief that it is safely deposited. Especially, may I be permitted to say, does it give me pleasure to welcome to the chair of state one in whose civic wreath literary honors are entwined, and who can forget the toils and lay aside the dignities of office, to cheer the young scholar on his way. Long may our literary institutions continue to raise up those who shall add to the dignity of office, the grace of learning, and the sanctity of private virtue; and who, while they devote their labors more particularly to the good of their own State, shall be regarded as belonging to the Union and to the world.

To His Honor the Lieutenant Governor, to the Honorable Council and Senate, and to the assembled Representatives of the people, the sentiments of this discourse are addressed, as the descendants of those who showed in the hour of peril, that they feared God rather than men. Following their example, you have come up, as you are about to enter upon your responsible duties, to present,

In this venerable house, thanksgivings and supplications to the Lord God of our fathers ; and to do homage in the name of the Republic, to His Institutions. This is well. But that Republic expects of you that you will imitate, not merely in form, but also in spirit, the bright examples that are set before you, that you will act from principle, that you will "obey God rather than men." So doing the Commonwealth will be safe, for it is the simple wisdom of goodness, that alone is truly wise.

SENATE.....

.....No. 1.

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# A D D R E S S

OF

HIS EXCELLENCY

EDWARD EVERETT,

TO THE

TWO BRANCHES OF THE LEGISLATURE,

ON THE ORGANIZATION OF THE GOVERNMENT,

FOR THE POLITICAL YEAR COMMENCING JANUARY 2, 1839.

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**Boston:**  
**DUTTON AND WENTWORTH, STATE PRINTERS.**  
.....  
1839.





# ADDRESS.

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*Fellow Citizens of the Senate and  
of the House of Representatives :*

WE are assembled, at the commencement of another political year, to engage in one of the most important works, which man is ever called to perform. As free government is universally admitted to be the greatest human blessing, which a nation collectively can enjoy, the duty of administering such a government, so as to preserve and transmit it in its purity, is of the highest responsibility. It is eminently so in this country, inasmuch as the prosperity and permanency of the Union depend in no small degree on the manner in which the State Governments are administered ; and the cause of free institutions throughout the world will be affected by the example, which we may exhibit of their tendency to promote virtue and happiness. Such is the important nature of the trust to which we have been called for a season by the People of the Commonwealth, and it becomes us to approach the performance of our duties, by a devout invocation of the blessing of ALMIGHTY GOD.

We have reason for thankfulness in the great improvement which has taken place in the condition of the country during the past year. When the last legislature met, it was at a period of general embarrassment in the financial affairs of the Union. The disordered state of the currency was felt to some extent in every branch of industry. In commerce and manufactures the depression was extreme. In the course of the year,—in virtue of the inherent energy of an enterprising people, placed on a fertile soil, enured to all the labors of productive industry, and blessed by Providence with a bountiful harvest,—the country has to a considerable extent wrought itself free from its embarrassments, and needs for its entire restoration nothing but a wise settlement by the general government of the financial questions still agitated.

In the patriotic efforts of individuals and institutions to effect the return of a sound currency, the banks of Massachusetts have borne their full share. A law was passed on the twenty-fifth of April last, legalizing on certain conditions the non-redemption of bills over five dollars, till the first day of the current year. This act was signed by me in the confident expectation, fulfilled by the event, that there would be no temptation on the part of the banks to take advantage of its provisions. A gradual resumption of specie payments took place, as is well known, early in the season; and the banks of the Commonwealth are now generally in a sound condition. The annual abstract of their returns, prepared by the Secretary of State, shows, that the specie now in their vaults amounts to the sum of two millions three hundred and ninety-four thousand six hundred and twenty-four dollars, being about nine hundred thousand dollars more than in October, 1837.

The report of the bank Commissioners has been made according to law and will forthwith be laid before the two houses. Their duty, it is believed, has been diligently and efficiently performed. The value of such a commission is of course to be estimated, not merely in the abuses which, when existing, it may bring to light, but in those also which in the nature of things are prevented from taking place, by the certainty of a rigorous scrutiny of each institution. There is, however, no reason to doubt, that the injunctions granted, on application of the Commissioners, against the institutions whose farther progress was deemed hazardous to the community, have had the effect of saving the public from heavy losses.

By an act passed at the extra session of Congress in October, 1837, the payment of the fourth instalment of the surplus revenue was postponed, till the first day of the present month. By a bill lately introduced into Congress, it is proposed that this instalment should be farther and indefinitely postponed; nor is it probable that it will ever be paid to the states. The enormous expenses of carrying on the war in Florida, for the expulsion of a remnant of the Indian population of that territory, have absorbed this and all the other available funds of the United States.

In the communication made to the Legislature at the commencement of the last session, I expressed satisfaction at the progress made in the settlement of the Massachusetts claim. As it had passed the ordeal of the accounting officers of the Government on principles sanctioned by Congress, and as the amount found due,—two hundred and seventy two thousand seven hundred and sixteen dollars,—had been reported to the House of Representatives by the Secretary of War, a strong belief

was entertained that the session would not close without an appropriation. This hope was disappointed; but as the subject may yet be brought up as a part of the unfinished business of the last session, I trust the present session will not be allowed to expire, without the final performance of this long delayed act of justice to Maine and Massachusetts. I notice with great satisfaction, that the allowance of interest on the principal sums reimbursed to the states, for expenditures during the war of 1812, has again been brought forward by one of the Senators of Massachusetts. A bill for this purpose once passed the two houses of Congress, but failed to receive the signature of the late President of the United States. A part of his objections were founded on details of the bill, and might be obviated by changes not inconsistent with its main object. As it is a common interest with several states, there is a reasonable prospect of its passage.

At the last term of the Supreme Court of the United States, the case of Rhode Island against Massachusetts came on for consideration. This suit is instituted by Rhode Island, in order, by the interposition of the Federal Court, to divest Massachusetts of a considerable territory on her southern boundary, maintained by Massachusetts to have been in her rightful possession from the first settlement of the country, and to have been admitted to belong to her by Rhode Island, in a mutual adjustment of the question about one hundred and twenty years ago. The counsel of the Commonwealth moved the Court, that the bill of Rhode Island should be dismissed, on the ground that the court has no jurisdiction of the case. The court affirmed its jurisdiction, and also granted to Rhode Island leave to amend her bill. No information has since reached the counsel of this Commonwealth of any further action on

the part of Rhode Island. Should that State persevere in the suit, it might, in some aspects of the case, be a grave question, whether Massachusetts should not withdraw her appearance. But if jurisdiction be not possessed by the court, the continued appearance of Massachusetts will not confer it ; if it be possessed, her non-appearance will not take it away ; while good may result from having the rights of the Commonwealth maintained by solemn argument before the court. For these reasons, the learned counsel hitherto employed to appear for the Commonwealth, will be instructed to continue to defend her interests, unless the Legislature,—to whose wisdom the subject is submitted,—shall otherwise direct.

In the course of the past year, the scrip of the Commonwealth has been issued to the amount of thirteen hundred and forty thousand dollars, in aid of the construction of the various rail-roads in different parts of the State. The annual reports of the directors of the several corporations will acquaint the Legislature with their condition respectively. The amount of travel over the Eastern Rail-road, as far as completed, greatly exceeds the estimate formed by its projectors. On the line of western communication, it is expected that the road to Connecticut river will be opened in the course of the ensuing season, and that great progress will be made in the remaining portion of the route through the State. If no unforeseen cause of delay occurs, it may reasonably be calculated, that, in less than three years from the present time, the State of Massachusetts, by the application of her credit to a moderate and safe extent in aid of individual resources, will have placed herself in connection with that vast system of communication with the entire west, which has been planned and executed by the public

spirit of the State of New York, availing herself, with wise and profitable munificence, of the natural advantages which Providence has placed within her reach.

It is highly satisfactory to learn, that the scrip of Massachusetts has commanded in London the highest price paid in that city, for any of the American State stocks. The amount accruing from the premium on the scrip, appropriated with other monies as a sinking fund for the ultimate redemption of the debt, is already greater than was anticipated when the first issue of scrip was authorized. The fund is now confided to the exclusive care of the Treasurer of the Commonwealth. The great increase of the duties of that officer, and the growing importance of this fund, induce me to invite the attention of the Legislature to the expediency of further provision for its management.

The triangulation of the State having been completed, a commencement has been made in the projection of the map. The original town surveys, in that part of the State in which they have been examined and reduced, are more generally imperfect than was anticipated. The plans of adjacent towns are often found not to correspond with each other. In many cases, all delineation of the topographical features of the towns is omitted. The joint resolution of the 21st of April, 1838, authorizes the Governor, if necessary, to order a re-survey, in any case in which the plan of the original town survey is too incorrect to be used in the construction of the map of the State. But as the incorrectness of these plans is chiefly disclosed by their failing to correspond with each other when brought together, it can in most cases only be ascertained by experimental measurements on the spot, to which town the error is to be ascribed. This circumstance has made it

necessary for the engineer and his assistants to repair to the towns in whose surveys the greatest inaccuracies exist, in order, by partial re-surveys, measurements, and fixing secondary stations, to obtain the materials for correcting the error. This course has been pursued in a considerable number of the towns west of the Connecticut river. This part of the State presents great natural obstacles to a correct survey, and to this cause, no doubt, the imperfection of the town maps is in part to be attributed. There is, however, reason to apprehend that the same difficulty, to some extent, will be found to exist in other parts of the Commonwealth, and somewhat delay the completion of this arduous undertaking.

The final report of the Astronomer appointed to make the astronomical observations and calculations necessary for the construction of the map, was rendered towards the close of the last session of the Legislature.

The progress of the Geological Survey of the State has been retarded by the serious illness of the geologist charged with that important work, nor will it probably be in his power to bring it to a close during the present year. That part of his report which was rendered at the last session of the Legislature, sufficiently evinces the importance of his researches, in developing the material resources of the Commonwealth. The example set by Massachusetts in instituting these surveys has been followed in many of the most respectable of her sister states and they have been regarded with great interest by men of science in foreign nations.

The commissioners on the various branches of the natural history of the State are not yet all prepared to submit their final reports. Farther opportunity is desired to

extend their researches, but no additional appropriations for this object are expected from the treasury.

The report of the commissioner for the agricultural survey of the State will be submitted at an early period, and exhibit the progress of his work during the past year.

The commissioners on the Criminal Law of the Commonwealth have been diligently engaged in the performance of their duty; and will shortly make report on the method and principles adopted in the prosecution of the undertaking, accompanied by a specimen of the work.

Great progress has been made in arranging the papers in the public archives. All the papers down to the year 1775, have been either bound or arranged for binding. The importance of their contents has thus for the first time been made fully apparent, and their use greatly facilitated. It is much to be regretted that the space assigned for the keeping of the public archives is inadequate to the purposes either of convenience or safety.

In the estimates from the War Department, submitted to Congress at the commencement of the present session, appropriations are recommended for carrying on the rebuilding of the fortification on Castle Island, and the construction of the fortress on George's Island. Several years must elapse before the latter and more important of these works is completed, and till that period arrives, the port of Boston remains defenceless from an attack by sea. Much time has heretofore been lost by the tardiness or entire failure of the appropriations; but I have entire confidence that the sums appropriated are expended with the utmost efficiency and fidelity by the engineer charged with the construction of these important works.

The Massachusetts General Hospital in both its departments, and the Institution for the education of the



blind, have been duly visited, according to law. The liberal grants from the Treasury to these institutions,—the provision made for the education of the deaf and dumb at Hartford,—and the establishment of the State Lunatic Hospital at Worcester, at the sole cost of the Commonwealth, are memorials of its legislation of which its citizens will never be ashamed. The sums which they have drawn from the treasury are large, but they have effected an amount of good not easily to be estimated, and of which we may venture to believe that all the fruits are not to be gathered in this stage of our being. The reports from these institutions will be duly submitted to the Legislature.

The Massachusetts State's Prison has been recently visited by the Executive. The annual reports of the inspectors, warden, physician, and chaplain, will be laid before the two houses. The state of the prison in reference to its government, and the successful operation of its discipline, during the past year, has been entirely satisfactory. It will appear from the reports of the inspectors and warden that a pecuniary loss is likely to be sustained by the institution, in a distant part of the Union, growing out of the disastrous stagnation of business in the year 1837. It is not, however, apprehended that this loss will make it necessary to ask the aid of the Legislature in supporting the establishment.

I regret to have to state that no diminution is believed to have taken place, during the past year, in the number of persons imprisoned for debt. A large proportion of those imprisoned are mariners, who appear to be almost wholly shut out from the benefits of the recent legislation of the State on this subject. There is reason to apprehend, that the greatest abuses exist in this connection ;

and that the jails of the Commonwealth are habitually made a part of the machinery, by which seamen are cruelly defrauded of their hard earnings. It is now four years since a law was passed, by which it was designed that imprisonment for debt on future contracts should be abolished. By the abstract of the returns prepared in the office of the Secretary of State, and transmitted to the Legislature on the 22d of February last, it appears that nearly one thousand persons were imprisoned for debt in the course of the year 1837. This extraordinary result seems to show the necessity of further laws to carry into effect the purpose of the Legislature, and especially to extend its operation to that class of the community most exposed to hardships in this respect,—I mean our seafaring brethren.

The report of the Land Agent will show the progress, which has been made in constructing the roads through the public lands in the state of Maine. The expenditure bestowed on this object will, it is believed, be amply returned to the treasury, with a revival of the demand for the public lands in that quarter. Wholesale depredations upon the timber on these lands still take place. No pains are spared to check these ravages on the public property ; but while the question of jurisdiction remains unsettled, it is impossible altogether to suppress them.

This important question is still in an unsatisfactory condition. The matter at issue between the United States and Great Britain regards the actual course of the boundary line as described by the treaty of 1783. The controversy between the two governments has grown out of an assumption, (the origin of which it might not be easy satisfactorily to explain,) that it is impossible to run a boundary line in exact conformity with the

treaty. The Legislature of Maine, at their last session, authorized a commission of exploration, to ascertain this point; and in consequence of the highly judicious measures adopted by the Executive of that State, this object, as far as concerns the most important matters at issue, has been effected. It appears from the recent message of His Excellency Governor Kent, to the Legislature of Maine, and the report accompanying it of the Commissioners charged with this survey, that no difficulty exists in ascertaining, according to the treaty of 1783, the position of the North-Western angle of Nova Scotia, or the course of the Highlands, which divide the waters flowing into the St. Lawrence, from those flowing into the Atlantic ocean. It is impossible, in reviewing the history of the negotiation on this subject, not to perceive that the rights and interests of Maine and Massachusetts were greatly prejudiced, by the manner in which it was conducted under the late administration of the General Government. I cannot suppress the opinion, *that if means had been seasonably taken to ascertain the character of the country by actual exploration; and if the question on the correctness of the boundary claimed by Maine and Massachusetts, in conformity with the treaty of 1783, could have been rescued from the vortex of party politics, and discussed under the advantages of local interest in the subject, and local responsibility for the result, the controversy would long ago have been brought to a satisfactory issue.*

The report of the Attorney General merits the particular attention of the Legislature. The great increase of *duty which has* devolved on that officer will not escape *their notice.* The suggestions relative to a provision to *meet a class of* expenses frequently occurring in the dis-

charge of the duties of his office, appear to me deserving of consideration ; and the necessity of effective measures for reducing the expenses of the administration of criminal justice cannot be disguised.

I feel it my duty again to ask the attention of the Legislature to the condition of Warren Bridge, and the various important questions connected with it, which remain undisposed of. Public convenience and private right seem to call loudly for some definitive arrangements.

Considerable inconvenience arises in executing the Election law of the Commonwealth, as contained in chapter fourth, section thirteenth of the Revised Statutes, whereby it is provided that "in all returns of elections, the whole number of ballots given in shall be distinctly stated." With all the care that is taken to render intelligible the blank forms which are transmitted to the towns, from the office of the Secretary of State, the blank to be filled by the whole number of ballots is, by the returning officers, sometimes left wholly vacant, sometimes filled up with the whole number, not of ballots, but of separate votes ; and sometimes with a number which, though purporting to be the whole number of ballots, will be found on examination to be inconsistent with the details of the return. This provision for ascertaining the whole number of ballots went into operation, for the first time, at the election of electors of President and Vice President in November, 1836. The Council on that occasion, decided not to reject returns thus defective, but to construe the election law in this as in all the other points, as favorably as possible to the exercise of the elective franchise ; and their course in this respect has been confirmed by the subsequent practice of the

two Houses. But in cases like those alluded to, no general method of ascertaining the whole number of ballots exists, but that whose known incorrectness led to the enactment of the new provision, viz. the division of the whole number of votes by the number of names borne on the ballot. The subject is not without considerable difficulty. The most efficient mode of correcting erroneous returns perhaps would be, to require the town clerk to seal up in open town meeting and preserve the original ballots, to be safely kept till the election shall have been finally decided by that branch of the government, which is made the ultimate judge in each particular case. Whenever a case presented itself of a deficient or erroneous return, a precept might issue to the town clerk, requiring him, in the presence of the selectmen, to open and again to count the original ballots, and make a corrected return of the election.

The Commissioners on the Militia, appointed in pursuance of a resolve of April 19th, 1838, have attended to the discharge of their duty, and will make their report at as early a period as practicable. I venture to hope, in the result of their labors, for an efficient remedy for the evils, under which the militia system among us has long suffered.

*The conflicting claims of Massachusetts and New York, relative to the possession of the western part of the latter State, were adjusted by a convention bearing date the 16th Dec. 1786. By that compact it was stipulated, that no purchase from the native Indians of New York, by any person to whom Massachusetts might grant the right of pre-emption of the lands of said Indians, shall be valid, unless the same shall be made in presence of and approved by a superintendent, to be*

appointed for such purpose by the Commonwealth of Massachusetts. A resolve passed the Legislature on the 26th Jan. 1828, authorizing the governor and council to carry this stipulation into effect. Toward the close of the year 1837, application was made to the Executive of this State, on behalf of the persons claiming the right of pre-emption to sundry parcels of land in the occupation of the Seneca and Tuscarora tribes of Indians, requesting the appointment of a superintendent on behalf of Massachusetts, to attend a treaty to be held at Buffalo, in the State of New York. In conformity with this request, a citizen of Buffalo was appointed, who was present at the negotiation of the treaty concluded at that place on the 15th of January last. This treaty was amended by the Senate of the United States, and it was directed by that body, that the treaty as amended should again be submitted to the Indians in council. The transaction had now assumed such a form, as to make it necessary that the superintendence of the renewed negotiation should be entrusted to a responsible officer of the Commonwealth, and the Adjutant General was appointed to this trust. In the discharge of this duty, he gave his attendance at the Indian reservations in the month of August, when a council was held, and subsequently, in the months of November and December, while attempts were made, by the United States Commissioner, to obtain the assent of the chiefs individually to the amended treaty. Massachusetts has no political nor pecuniary interest in these transactions; but she is bound by compact to fulfil the office of a protector of the rights of these feeble remnants of once powerful tribes. I have reason to think that the manner, in which the Adjutant General has performed the duty, devolved upon him, is

entirely acceptable to the two parties unhappily existing among the Indians, as well as to the Commissioner of the United States. The cost of the superintendency has been defrayed, in conformity with usage, by the pre-emptive owners, without any expense to the Commonwealth.

The second annual report of the Board of Education, accompanied by that of their Secretary, will be forthwith submitted to the Legislature.

The annual report of the Treasurer of the Commonwealth has been laid before the two houses. It appears from this document, that the expenditure of the year has fallen short of that of the preceding year, by a sum of more than \$21,000. Owing, however, chiefly to the diminished product of the tax on the banks and on sales at auction, there has been a decrease in the receipts into the Treasury, as compared with those of the last year, of nearly \$45,000. If the bounty on wheat, to be paid in the course of the present winter, be considered as chargeable on the year 1838, it will probably make the expenses of that year equal to those of the year preceding.

It is a necessary result of the growth of the State, that there should be a gradual increase in the cost of maintaining the public establishments. So long as the revenue of the State was partly raised from a State tax, accompanied with a provision that the compensation of the members of the Legislature should be reimbursed by the towns to the Treasury, the expenses of the Commonwealth were kept within the limits of a severe economy.

The rapid increase of revenue from the taxes on bank Capital and Sales at Auction, effected a great change in the financial system of the Commonwealth. The people

were relieved from the burden of an annual State tax, which had been levied from the settlement of the country. The funds accruing from other sources, such as the sums received and to be received on account of the Massachusetts Claim and the sales of Eastern Lands, and more lately the Commonwealth's share of the Surplus Revenue, have been successively pledged or disposed of in such a way, as to yield no income, present or prospective, toward the ordinary demands of the public service.

But notwithstanding this diminution or appropriation of all its other resources, the Treasury continued to enjoy, up to the commencement of 1837, a large and growing income from the taxes just named ; and a corresponding liberality was evinced in the appropriations. The most considerable public charge, the compensation of the two Houses, was transferred to the Treasury of the State. The existing public establishments were enlarged, and provision made for new objects deemed worthy of the patronage of the government. As no part of the income of the State was derived from direct taxation, the motives for a jealous vigilance over the public expenditure were to some extent weakened.

It is far from my purpose, however, to intimate that the resources of the Commonwealth have been lavished upon unworthy objects. To repel any such inference, we need but review some of the prominent articles of expenditure. Among them are a part of the cost of the enlargement of the State's Prison, and the foundation and support of the State Lunatic Asylum ; the grants annually made to the Agricultural Societies, to the Asylum for the Deaf and Dumb at Hartford, to the Institution for the Blind, and more recently, to the Eye and Ear Infirmary. Other objects have been the scientific surveys of the



State; an edition of the Special Statutes since 1822; the publication of the Old Colony Laws and Charter, and of the Journal of the Provincial Congresses of the State. The bounty to the Militia reached in 1837 the sum of thirty-two thousand dollars. The extra session of the Legislature for revising the Statutes, the session of a large commission in the recess for the same object, the printing of their report, and of the volume of the Statutes when revised, entailed a very heavy expense upon the treasury, in the years 1835 and 1836. Among the increased expenses of a more doubtful character, one of the most considerable is the balances paid to the county treasurers. This charge, which in 1832, amounted to \$28,626, has risen the past year to \$68,680, and appears to be in a state of alarming increase.

But all other items of increased expenditure are inconsiderable compared with that above alluded to, of the compensation to the two houses, produced by the joint effect of the augmented size of the House of Representatives, and the protracted length of the sessions, aided in a single year by an increased rate of compensation. By the combined operation of these causes, the pay of the Legislature, which in 1825 amounted to \$36,603, was swelled in 1837 to \$164,583. The recent amendment of the Constitution has effected some reduction in this charge, but it was, nevertheless, greater the past year than in any former year, with the exception of 1836 and 1837. During the same period, there has been reduction of expenditure wherever the Legislature has deemed it practicable and advisable; but to no considerable extent now recollected, with the exception of the allowance for State paupers.

Several of the heaviest of these items of new and in-

creased expenditure have been thrown upon the treasury during the few last years ; such as the extra session, the enlargement of the State Lunatic Asylum, the militia bounty, and the increase of county balances.

These heavy drafts upon the public treasury have, in no one year, very greatly outrun its actual resources, and owing to the authority habitually given to borrow money in anticipation of the revenue, they have never exceeded its available means. But it has been apparent to the Legislature that the actual receipts into the treasury, independent of borrowed money, have fallen short of the expenditure. This deficiency, the past year, is stated by the treasurer at \$72,352, of which the sum of about \$45,000 is chargeable to the falling off in the receipts. The balance of the account of the state of the treasury on the first day of the present month, exhibits a sum of \$167,990 borrowed in anticipation of the revenue of the ensuing year. But when it is considered that the bounty on wheat accrues immediately, and that a farther diminution of the bank tax may be expected, the utmost that can be depended upon from the actual receipts of 1839, is that they will meet the expenditure of the year, and consequently furnish no surplus toward reimbursing the money borrowed in advance of the revenue. On the contrary, as the principal part of the revenue is received in the months of April and October, while the largest expenditures occur in the first part of the year, the loans habitually made in advance of the revenue will be needed for current expenses. For these reasons, it will be for the Legislature to consider whether it would not be for the benefit of the treasury, and otherwise for the public advantage, to authorize the treasurer to make some more convenient ar-

range ment for absorbing the floating debt of the Commonwealth.

Although the State of Massachusetts has taken a just pride in her public establishments, in her noble charities, in having set an example to her sister states of the development of her resources by scientific exploration, and in other acts of enlightened liberality, I shall be pardoned for repeating the suggestion, which I have felt it my duty to make on every former occasion like the present, that an economy of the public funds is an imperative duty. The resources of the State are vast; but the means of the treasury are limited. The most productive sources of revenue are surrendered to the General Government. Massachusetts lavished her blood and treasure,—as freely as any of her sister states,—in the war by which independence was achieved, and an almost boundless public domain acquired. From that ample source of revenue the states have been shut out. The proceeds of the sales of public land are paid into the national treasury. A plan of distribution which would have afforded to every state a desirable revenue, while it would have saved the country the serious embarrassments of a surplus, was enacted by Congress, but was negatived by the late President of the United States. The entire income of the Post Office flows in like manner into the National Treasury;—and above all the impost,—the least burdensome and most productive of all the forms of taxation,—belongs exclusively to the General Government. In this state of things, Massachusetts at present has scarce any means of supporting her public establishments and carrying on her government, but taxes on the active capital of the community,—taxes easily collected and therefore convenient,—but far from being

beneficial in their effect on the business operations of the State. These considerations establish the necessity of the utmost prudence in the expenditure of the public money. Several objects of liberal appropriation, it is true, are of a nature not to require to be repeated or continued, but too much watchfulness cannot be exercised, in preventing new calls on the treasury for other purposes, and beyond the present available resources of the State.

The law passed at the last session of the Legislature prohibiting the sale of spirituous liquors, in a less quantity than fifteen gallons, except for certain purposes, has been the subject of much division of opinion among the people of the Commonwealth. The sale of ardent spirits has, from a very early period, been deemed a legitimate subject of legal regulation. In addition to its bearing on the public peace and order and the morals of the community,—particularly of its best hope the youth of the Commonwealth,—the fact that the people of the state are taxed to a large amount, for the support of paupers, makes it the imperative duty of the government, by all constitutional means, to dry up, as far as possible, the acknowledged sources of pauperism. The previously existing law on this subject, was deemed obnoxious to serious objections. It was urged that it gave to the sale of spirituous liquors a direct legal sanction, scarcely enjoyed by any other branch of business; that it established an exclusive privilege, on the part of those able to obtain licenses; and that it made distinctions, not resting on any ground of general policy, between the inhabitants of different towns and counties. These considerations are supposed to have united with those which had direct ref-

erence to the promotion of temperance, in inducing the Legislature to pass the law of the 19th of April last. It was passed by majorities of the two houses, much greater than usually exist on questions of high moment, and without such divisions as are founded on differences of opinion upon general political questions. Regarding it as a question of expediency, of which the Legislature is the only judge, I deemed it my duty to sign the law. This official act, I may be permitted to say, was not performed without fears, that the law would fail to command that degree of approbation from the community, without which it could not go into successful operation.

By allowing another session of the General Court to intervene before the law should take full effect, the Legislature that passed it seems designedly to have afforded an opportunity for a renewed consideration of the subject. The members of the present Legislature have no doubt been elected in the belief that it will come before them, and they are of course fully acquainted with the opinions of their constituents on the merits of the law. All legislation on a subject of this nature, as is universally admitted, must depend for its success on public sentiment. It will be for the two houses to decide, under all the circumstances of the case, whether the great body of the people approve the law as a useful practical measure and will aid the magistrate in enforcing it, or whether there is ground to apprehend, that opposition to it may continue and increase, to the injury of the cause which the law itself was designed to promote. There is reason, moreover, to doubt, whether the law in its legal operation on the previously existing statutes regulating the sale of ardent spirits, has not produced results neither

intended nor expected. The whole subject, I doubt not, will command the calm, dispassionate, and deliberate revision of the Legislature.

Resolutions from the State of Connecticut on the public lands of the United States ; a report and resolutions from the same State on National Executive patronage ; a report and resolutions from the State of Maine, on the subject of the North Eastern Boundary ; and a report and resolutions from the State of Georgia, on the subject of the refusal of a former Governor of Maine to surrender two citizens of that State, demanded as fugitives from justice, will be communicated to the Legislature.

Permit me, fellow citizens, in conclusion, to tender you my zealous and respectful co-operation in all your measures for the welfare of our common constituents. By the diligence with which we engage in the public service, we shall best evince our sense of duty to the People, who for a time have reposed their highest interests in our hands. The trust is momentous ;—the responsibility is great ; good or evil for a remote posterity may flow from our conduct. May it be our endeavor by a single eye to the public good, by frugality in the disposal of the public funds, by a steady adherence to sound principles, and by a faithful imitation of all that is pure and elevated in the example of our predecessors, to secure the continued prosperity of our beloved native State.

EDWARD EVERETT.

*Council Chamber, 10th January, 1839.*

**SENATE....**

**....No. 2.**

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**DOCUMENTS**

**RELATING TO**

**THE STATE PRISON.**

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## **Commonwealth of Massachusetts.**

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*To His Excellency the Governor,  
and the Honorable Council:*

THE Inspectors of the State's Prison respectfully submit their Annual Report for the year ending the 30th of September, 1833.

The number of convicts on the 1st day of October, 1837, was two hundred and ninety-one. Since that time, one hundred and fourteen have been received, making the whole number who have been inmates during any part of the year, amount to four hundred and five. During the same time, seventy-four have been discharged on expiration, and twenty-one by remission of sentence; one has been retained in jail by order of court; six have died, and one has committed suicide. Making a total of one hundred and three, and leaving three hundred and two inmates of the prison at the present time. Of these, fifteen are patients in the hospital, or unable to labor. Two are in the cells, being partially or wholly deranged; twenty-seven are employed in menial services, and two hundred and fifty-eight in various kinds of profitable labor.

Of the one hundred and fourteen received during the past year, eight are under sentence for crimes committed against the person, and one hundred and six for offences against property and morals.

Of those received, forty-seven are native citizens of Massachusetts ; thirty-eight belong to other States in the Union ; and twenty-nine are foreigners.

Three hundred and fifteen has been the greatest, and two hundred and ninety-one the smallest, number of inmates at one time.

There have been twenty-five recommitments during the year, a greater number than has been made during the same space of time, since 1826.

The Warden's report on the financial state of the prison accompanies this report and will be deposited in the office of the Treasurer. The stagnation of business has been felt in the receipts of labor, and the failure of a mercantile house in New Orleans has led to the suspension, and may occasion the loss of a very considerable sum to this institution. As, however, the proceeds of the industry of the prisoners have been sufficient to defray all expenses, and as the loss, even if total, would not absorb the reserved profits of the institution, it is hoped that no claim will be made on the State for pecuniary assistance.

The conduct both of the officers and inmates having been entirely satisfactory during the past year, there is no point, except the uncommon number of recommitments, to which the board of inspectors would invite your attention. To be perfect, a place of public punishment should unite such confinement and suffering as should deter from a repetition of the offence while at the same time it reformed the offender and restored him, on his discharge, an innocent, if not a useful member of society. This institution unites these requisites in a great degree. The labors of the Chaplain, and the Sabbath School which was sanctioned by an act of the last Legislature, are of con-

tinued and increasing usefulness ; and if, in addition to these, the purchase of a few well selected books might be authorized, the Inspectors know of no improvement, either in discipline or instruction, that they would at present suggest.

But there is one circumstance which counteracts the benefits that might be derived from the discipline and punishment in promoting individual reformation. The convict leaves prison without property and with a blasted character. His friends shun, and strangers avoid him. What is he to do? Solitude, meditation, moral and religious instruction, may have done their work, and the convict may return to the world with a sense of the folly as well as the wickedness of his former course, and with a determination to lead a virtuous and industrious life. The prison gate closes behind him, and he finds himself alone and unsupported. Passions, subdued for want of objects, become excited. His companions ridicule his reformation. Want presses upon him, and a knowledge of his former situation deprives him of his employment, or compels him to conceal his history, and commence a life of reformation by an act of deceit in order to obtain it. Under such circumstances, are we to be surprised that he adds another to the list of recommitments. The board do not feel able, at the present time, to point out what can or ought to be done to procure an asylum, or provide for the welfare of this class of individuals or to decide whether such assistance should be given by the State, or left to the exertions of the benevolent and philanthropic. They could not, however, feel they had discharged their duty to those who, from their situation, cannot speak for themselves, if they did not call the attention of the public to the necessity of some provision for the wants of the discharged

convict, and express, at least, the hope that in a State where so much has been done for the deaf, the blind, and the insane, some plan might be devised of aiding the wicked man when desirous of turning away from his wickedness, and of encouraging and supporting him in his endeavors to do what is lawful and right.

JOSIAH QUINCY, JR.,  
S. LELAND,  
SAMUEL GREELE,

*Inspectors.*

CHARLESTOWN, *September 30, 1838.*

*To His Excellency EDWARD EVERETT, Governor, and the Honorable Council, of the Commonwealth of Massachusetts :*

THE Warden of the State Prison has the honor to submit the following statement of the concerns of that Institution.

The whole number of Convicts remaining in Prison, October 1, 1837, . . . . .	291
Whole number of Convicts received into Prison during the year ending 30th September, 1838,	114
	<hr/> 405

Discharged from Prison during the year ending 30th September, 1838 :

By expiration of sentence, . . . . .	74
By remission of sentence, . . . . .	21
Died, . . . . .	6
Suicide, . . . . .	1
Detained in Jail by order of Court, 1—	103

Remaining in Prison, September 30th, 1838,	<hr/> 302
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*Ages of those in Prison.*

Under 15 years, . . . . .	1	45 to 50 years, . . . . .	18
15 to 20, . . . . .	10	50 to 55, . . . . .	12
20 to 25, . . . . .	64	55 to 60, . . . . .	4
25 to 30, . . . . .	67	60 to 65, . . . . .	6
30 to 35, . . . . .	65	65 to 70, . . . . .	3
35 to 40, . . . . .	28	75 and upwards, . . . . .	2
40 to 45, . . . . .	22		

*Term of Sentences.*

1 year, . . . . .	28	7 years, . . . . .	24
1 year and 6 months, . . . . .	4	8 years, . . . . .	5
2 years, . . . . .	51	9 years, . . . . .	4
2 years and 6 months, . . . . .	2	10 years, . . . . .	13
2 years and 9 months, . . . . .	1	11 years, . . . . .	3
3 years, . . . . .	45	11 years and 6 months, . . . . .	1
3 years and 4 months, . . . . .	1	12 years, . . . . .	5
4 years, . . . . .	32	14 years, . . . . .	1
4 years and 1 month, . . . . .	1	15 years, . . . . .	3
5 years, . . . . .	33	20 years, . . . . .	3
6 years, . . . . .	23	During Natural Life, . . . . .	18

*Crimes.*

Murder, . . . . .	3	Entering a House in the night time, without breaking, . . . . .	1
Arson, 1st Degree, . . . . .	2	Shop Breaking, . . . . .	4
Arson, 2d Degree, . . . . .	2	Forgery, . . . . .	18
Manslaughter, . . . . .	7	Passing, or having in possession with intent to pass, counterfeit money, . . . . .	8
Assault, with intent to kill, . . . . .	6	Perjury, . . . . .	1
Attempt to commit a Rape, . . . . .	9	Fraud, . . . . .	1
Attempt to Poison, . . . . .	1	Escape from the House of Correction in Suffolk, . . . . .	1
Felonious Assault, . . . . .	2	Receiving Stolen Goods, . . . . .	3
Robbery, . . . . .	4	Obtaining Goods by false pretences, . . . . .	7
Adultery, . . . . .	7	Attempting to cheat and defraud, . . . . .	1
Lewd and Lascivious Cohabitation, . . . . .	3	Embezzlement and Larceny, . . . . .	1
Burglary, . . . . .	16	Attempt to Steal from the Person, . . . . .	1
Attempt to commit a Burglary, . . . . .	1	Common and Notorious Thief, . . . . .	18
Malicious Burning, . . . . .	4	Larceny, . . . . .	166
Breaking a House in the night time, . . . . .	3		
Breaking a House in the day time, . . . . .	1		

*States and Countries of which they are Natives.*

Maine, . . . . .	18	Florida, . . . . .	1
New Hampshire, . . . . .	21	District of Columbia, . . . . .	1
Massachusetts, . . . . .	132	British Provinces in N. Amer- ica, . . . . .	6
Vermont, . . . . .	12	West Indies, . . . . .	1
Rhode Island, . . . . .	11	Carthagenia, . . . . .	1
Connecticut, . . . . .	10	England, . . . . .	19
New York, . . . . .	13	Scotland, . . . . .	5
Pennsylvania, . . . . .	8	Ireland, . . . . .	29
Maryland, . . . . .	1	France, . . . . .	2
Virginia, . . . . .	3	Germany, . . . . .	1
North Carolina, . . . . .	1	Italy, . . . . .	1
Louisiana, . . . . .	2	Sweden, . . . . .	1
Missouri, . . . . .	1	Malta, . . . . .	1

*Employment.*

Stone Cutters, . . . . .	87	Coopers, . . . . .	4
Carpenters, . . . . .	3	Tinmen, . . . . .	6
Team Hands, . . . . .	16	Cooking, Washing and Baking, . . . . .	13
Tool Grinders, . . . . .	4	Waiters and Messengers, . . . . .	4
Blacksmiths, . . . . .	22	Barbers, . . . . .	3
Whitesmiths, . . . . .	5	Sweepers in the Solitary Pri- son, . . . . .	2
Shoemakers, . . . . .	15	Wood Sawyers and Lumpers, . . . . .	4
Tailors, . . . . .	5	Invalids, . . . . .	4
Cabinet Makers, . . . . .	45	Superannuated, . . . . .	1
Upholsterers, . . . . .	6	Deranged, . . . . .	2
Brush Makers, . . . . .	35	Attendant in Hospital, . . . . .	1
Hatters, . . . . .	5	Patients in Hospital, . . . . .	10

*Crimes of those received the last year.*

Larceny, . . . . .	65	Attempt to commit a Burglary, . . . . .	1
Common and Notorious Thief, . . . . .	11	Forgery, . . . . .	5
Passing, or having in possession with intent to pass, counterfeit money, . . . . .	2	Robbery, . . . . .	1
'Cheating by false pretences, . . . . .	3	Attempt to commit a Rape, . . . . .	2
Attempting to cheat and defraud by false pretences, . . . . .	1	Adultery, . . . . .	2
Fraud, . . . . .	1	Lewd and Lascivious Cohabitation, . . . . .	3
Breaking a Store, . . . . .	2	Murder, . . . . .	2
Robbing from the person, . . . . .	1	Manslaughter, . . . . .	1
Embezzlement, . . . . .	1	Assault with intent to kill, . . . . .	1
Entering a House in the night time without breaking, . . . . .	1	Felonious Assault, . . . . .	1
'Receiving Stolen Goods, . . . . .	1	Perjury, . . . . .	1
'Entering a House in the night time with a felonious intent, . . . . .	1	Arson, 2d degree, . . . . .	1
Burglary, . . . . .	1	Malicious Burning, . . . . .	1
		Escape from the House of Correction in Suffolk, . . . . .	1

*Sentences.*

1 year, . . . . .	29	7 years, . . . . .	4
1 year and 6 months, . . . . .	4	8 years, . . . . .	1
2 years, . . . . .	25	9 years, . . . . .	1
3 years, . . . . .	21	10 years, . . . . .	1
3 years and 4 months, . . . . .	1	11 years, . . . . .	1
4 years, . . . . .	6	12 years, . . . . .	1
5 years, . . . . .	11	During Natural Life, . . . . .	4
6 years, . . . . .	4		



*Ages.*

Under 20 years, . . . . .	7	40 to 45 years, . . . . .	8
20 to 25, . . . . .	21	45 to 50, . . . . .	5
25 to 30, . . . . .	30	60 to 65, . . . . .	2
30 to 35, . . . . .	25	65 to 70, . . . . .	3
35 to 40, . . . . .	13		

*States and Countries of which they are Natives.*

Maine, . . . . .	8	British Provinces in N. Amer-	
New Hampshire, . . . . .	9	ica, . . . . .	3
Massachusetts, . . . . .	47	England, . . . . .	12
Rhode Island, . . . . .	3	Ireland, . . . . .	6
Vermont, . . . . .	7	Scotland, . . . . .	4
New York, . . . . .	7	France, . . . . .	1
North Carolina, . . . . .	1	Italy, . . . . .	1
Pennsylvania, . . . . .	3	Sweden, . . . . .	2
Virginia, . . . . .	1	Malta, . . . . .	1

*Crimes of those in Prison, sentenced to confinement during their Natural Lives.*

Murder, punishment commuted, . . . . .	3	Arson, 2d degree, . . . . .	1
Arson, punishment commuted, . . . . .	2	Passing, or having in possession with intent to pass, 10 or more, counterfeit Bank Bills, . . . . .	1
Robbery, . . . . .	4	For having been confined three several times in this Prison, . . . . .	3
Burglary, . . . . .	4		

Of those in Prison, 17 are Negroes and 9 are Mulattoes. Of this Number, 4 Negroes and 4 Mulattoes were received the past year.

*Of the 114 Convicts received the past year, 25 have been previously confined in this Institution. The following Table gives their Names, Ages, the Number of times they have been confined here, the State or Country in which they were Born, where they were last Convicted, and of what Crime.*

NAMES.	Age.	No. of Times.	Where Born.	Where last Convict'd.	CRIME.
Elisha Cole,	32	Three	Maine, . .	Plymouth, .	Larceny.
James Williamson,	28	Twice	Massachusetts, .	Salem, .	Robbery from the Person.
Charles Hilton,	25	. .	Massachusetts, .	Boston, .	Larceny.
John T. Whiting,	40	. .	Massachusetts, .	New Bedford,	Larceny.
Henry Williams,	19	. .	New York, .	New Bedford,	Larceny.
James L. Wilson,	29	. .	New Hampshire,	Dedham, .	Larceny.
John Crowell alias Getchell,	39	Three	Maine, . .	Boston, .	Forgery.
Ormon Johnson,	21	. .	Vermont,	Worcester, .	Robbery on the Highway.
George White,	. .	Four	Massachusetts, .	Worcester, .	Common and Notorious Thief.
Emery Delano,	31	. .	Massachusetts, .	Dedham, .	Malicious Burning.
Richard West,	47	. .	Massachusetts, .	Boston, .	Larceny.
Hollis Parker,	44	. .	Massachusetts, .	Worcester, .	Attempting to Cheat and De- fraud by False Pretences.

TABLE—CONTINUED.

Names.	Age.	No. of Times.	Where Born.	Where last Convicted.	Crime.
James Gallagher,	40	.	Ireland, .	Boston,	Larceny.
Duncan McLean,	40	.	Scotland,	Lenox,	Larceny.
Joseph Carleton,	39	.	New Hampshire,	Concord,	Entering a Dwelling House in the Night time with a felonious intent.
Abner Rogers,	25	.	Massachusetts,	Ipewich,	Larceny.
Erastus Plumbly,	27	.	Canada, .	Northampton,	Larceny.
John Webber,	33	.	England,	Boston,	Larceny.
Ezra Adams,	20	.	Massachusetts,	Concord,	Larceny.
Timothy Loker,	28	.	Massachusetts,	Concord,	Larceny.
John Bray,	26	.	Massachusetts,	Concord,	Larceny.
John Fernald,	28	.	Maine, .	Salem,	Larceny.
James B. Tuck,	26	.	Maine, .	Boston,	Larceny—Com. & Noto. Thief
Samuel H. Hopkins,	38	.	Rhode Island,	Boston,	Larceny.
Ebenezer Carr,	63	.	Massachusetts,	Plymouth,	Larceny.

*Of those received the last year,*

36 were convicted at Boston; 12 at Concord; 3 at Cambridge; 4 at Lowell; 5 at Salem; 7 at Ipswich; 16 at Worcester; 2 at Northampton; 3 at Springfield; 2 at Greenfield; 4 at Lenox; 4 at Plymouth; 4 at New Bedford; 4 at Taunton; 6 at Dedham; and 2 at Nantucket.

It is with feelings of gratitude to the Author of all good, that we are permitted to report a continuance of the usual good order, obedience and industry which have so long prevailed in this establishment.

It is believed, that no year of its history will show a better state of things in this respect. But few cases of violent outbreking of ungoverned passions have taken place; and, in general, the convicts seem to have felt, that their own comfort and happiness were best promoted by an uniform observance of the Rules and Regulations established for the government and discipline of the institution.

By reference to the schedule, at the close of this report, exhibiting the amount of disbursement and income, it will appear, that the profits arising from the operations in the stone and the labor departments, and from other sources, have been sufficient to meet all the expenditures for the support of the institution, including the charges for repairs of real estate.

The result is more favorable than had been anticipated, on taking into consideration the depressed state of building operations in the country generally, together with the increased expenses for rations and salaries, compared with years when great profits had been realized.

There has not been so much difficulty experienced during the past year, in obtaining the means of employment for the convicts, as in securing contracts for the more profitable kinds of work. Orders for stone were not so readily at command, as to afford an opportunity for choice or preference. But keeping in view the necessity of having every able-bodied man constantly at work, it became obviously a duty of the first importance,

to secure such means for that purpose, as were attainable, and not hazard their loss, in the vain hope of better prospects. The general state of the stone business in this community, and at other places more distant the past season, shows that the interests of the institution were best consulted by the course pursued.

The present engagements in the stone department are rather limited ; and will be accomplished in a few weeks. The prospect of obtaining contracts to be executed during the latter winter and early spring months, is very doubtful ; and we anticipate the necessity, in order to keep the laborers in that department constantly employed, of partially working the rough stock, and leaving it to be finished, when orders may be at hand at some future day.

This mode of proceeding should only be resorted to, when necessary to prevent idleness. It is far from being profitable ; and besides, it affords no aid, for the time being, to the increase of necessary funds to meet the constant demands on the treasury of the prison. If, however, business shall prove dull for a few months, we may safely anticipate more favorable prospects in the latter spring months, and be enabled to participate in executing a good share of such orders as may be in market at that season.

By the failure of the house in New Orleans, to which our shipments of stone have been consigned, for several years past, a large amount of the funds of the institution are, for the present, rendered unavailable. What portion will ultimately be secured, there is, at this time, no means of determining. The estate is now in the course of settlement by the agent himself, who has been appointed syndic for that purpose, and, as we are informed,

by the unanimous vote of the creditors. From his respectable standing, and well known character for honesty and ability, it is to be presumed, their interests will be faithfully and promptly attended to.

The reflections naturally produced by this calamity, are of the most painful character, particularly to one who has devoted the best energies of his mind to the accumulation and security of the property at risk.

But while we cannot but express the deepest regret, at the misfortune which has involved, not only a large amount of the property of this institution, but also of several highly respectable individuals, to as great or greater amount; yet there is much satisfaction in reflecting upon the long season of prosperity enjoyed here, and of exemption from any serious loss, until the present calamity.

From the year in which this institution was first established, it has never before realized, it is believed, for so long a period, an income sufficient to meet all the expenses for its support. Not one dollar has been drawn from the Treasury of the Commonwealth, since the year 1832, for that purpose.

Besides the cost of enlarging one of the workshops, and of erecting another, and also charges for considerable repairs of the real estate, the stock account has increased since 1832, between three and four thousand dollars, not including the sum of thirty-one thousand one hundred and four <sup>2</sup>/<sub>100</sub> dollars, due from our Agent in New Orleans.

The business operations, even of the past year, would have increased the stock account several thousand dollars, if the cost of rations and the officers' salaries had not so greatly exceeded those items of expense in *past years*. But whether the present year will witness

a continuance of this prosperity, or whether it may be found necessary to call for Legislative assistance to meet the demands on the treasury of the institution, cannot now be determined. Every effort, however, will be made to avoid, if possible, the latter alternative.

The financial concerns of the prison having become very much changed by the state of the demands on New Orleans, no measures have been taken to carry into effect the Legislative resolve of last winter, authorizing some further improvements in the workshops, nor will it, probably, for the same reason, be deemed expedient to make any attempt towards accomplishing that object the present year.

The past season would have been a very favorable one, so far as the rates of wages and of materials are concerned, to carry into execution the resolve of 9th of April, 1836, providing for an extension of the Prison wharf, an improvement much needed to facilitate the business of the stone department, and for other purposes. But the appropriation, specified in the resolve, is quite insufficient to accomplish the object.

To enlarge the wharf, with a proper regard to the present and future wants of the institution, would require, it is presumed, the sum of eight thousand dollars. We do not, however, wish to be understood as pressing this subject at the present time, but leave it to the wisdom of the Legislature, to increase the appropriation, whenever it may be deemed expedient.

In closing this report, the warden begs leave to remark, that to the Hon. Board of Inspectors, and to the chaplain and physician, he is under renewed obligations for their continued kindness toward him: nor can he, without doing injustice to his own feelings, omit to express his



gratitude, and a strong sense of obligation to those gentlemen who have recently retired from the board, whose kind and friendly deportment, and whose counsel and support he has received, at all times, and especially in seasons of a most trying character, and which will be borne in grateful remembrance.

It is with feelings of great satisfaction, that the warden would also remark upon the fidelity and strict attention to duty, of the deputy warden, and the other subordinate officers. Their constant and faithful efforts to secure order and promote industry and economy throughout the establishment, entitle them to the thanks of their superiors, and to the respect and esteem of the community in general.

*The accounts, having been made up, will, on being approved by the Hon. Board of Inspectors, be placed in the office of the Treasurer of the Commonwealth to be audited according to law.*

## STATE PRISON.

[Jan.

To Cash paid for Provisions, . . .	\$12,386 37	By Stone Department, . . .	\$23,625 46
" " for Clothing, . . .	4,529 11	By Labor " . . .	14,033 62
" " for Hospital expenses, . . .	444 57	By Fees of Admittance, . . .	886 25
" " for Fuel and other expenses, . . .	3,722 96	By Fixtures and Tools, . . .	270 24
" " to Prisoners discharged, . . .	408 40	By Profit and Loss, . . .	188 49
" " for Officers' Salaries, . . .	16,171 91		
" " for Transportation of Prisoners, . . .	757 90		
" " for Repairs of Real Estate, . . .	525 90		
	<u>\$38,947 12</u>		<u>\$39,004 06</u>
To Balance, being profits, . . .	56 94		
	<u>\$39,004 06</u>	By Balance, . . .	\$56 94

All of which is most respectfully submitted by your obedient servant,

CHARLES LINCOLN, JR., Warden.

Massachusetts State Prison, December 1, 1838.

*To His Excellency EDWARD EVERETT, Governor of the Commonwealth of Massachusetts, and the Honorable Council :*

The Chaplain of the Massachusetts State Prison, in preparing this, his Eleventh Annual Report, feels that he may well avoid presenting, circumstantially, many topics which, though always appropriate, have been so often considered, as to render a recapitulation both unnecessary and tiresome.

In general terms, he would remark, and he does it with great satisfaction, that the past year has been characterized, in the institution, by order, cheerful submission to authority, laudable industry, and a very gratifying attention to religious and moral instruction, both private and public.

The advantages enjoyed by the inmates of this prison, for moral improvement and salutary discipline, can hardly fail to exert on many minds and hearts a healthful influence; and it is gratifying to know, that many who have left the institution have been greatly improved in their character and habits, and are maintaining a respectable standing in society.

Still, there are those, who, notwithstanding all that is done for their moral renovation, continue without improvement, and, apparently, become more and more wedded to the love and practice of iniquity. After all, it is proper to despair of none. All practicable means should be devised and unceasingly applied to produce the desired effect, with a humble reliance on the interposition

and aid of that being, in whose hand are all hearts, and who has only to say, "Let there be light," and there shall be light.

But while there are considerations and results to cheer the heart in the department of labor assigned to the chaplain of such an institution, there are others to dishearten, and, at times, to induce the feeling, that to attempt to stay the tide of abounding iniquity, to counteract the contaminating and destroying influences which, almost every where, are in operation, and to restore the degraded and guilty wanderer to virtue, to self-respect, and to happiness, is but labor spent in vain.

But then, again, when the nature, the design, and the efficacy of the gospel of Jesus Christ are contemplated, with what this gospel has already done, and is destined to accomplish in the purification and renovation of guilty man, at once, there breaks through all the darkness a light to cheer the laborer onward in the path of self-denial and christian benevolence.

It may be difficult and even impossible to trace distinctly all the causes which operate in producing the difference which exists, in different years, in the number of commitments and recommitments to our prison. In some years, there will be *comparatively* few ; and again, in other years, the numbers are greatly augmented. In producing such results, various causes may contribute their influence.

But it is of the utmost importance, and especially to those who frame and modify our laws, and to whom, to a very great extent, is entrusted the public welfare, to ascertain and understand most clearly the causes, with their nature and operation, which, pre-eminently, corrupt the public morals, and lead to the perpetration of crime. No

man, who has any claim to the character of a patriot or a christian, can for a moment feel indifferent in regard to such a subject. And here it is very fortunate, that to a discerning mind there is very little room for mistake ; for whatever may be said of some causes which, to a certain extent may contribute to such a result, there is one cause which, more than any and all others, debases, impoverishes and destroys. Whose mind does not, almost instinctively, at once fasten upon it. Need it then be named ?

“ Go to the prison house,—assume the task  
To gaze upon its sufferers,—and ask  
Why man,—whose energies were given,  
To fit him for a blissful seat in heaven,—  
Should thus degraded be—shut from the world,  
And into infamy's black torrent hurled ?  
Intemperance cries,—’Twas under my control,  
I gave, and they partook, the tempting bowl.”

The voice of “lamentation and mourning and woe,” comes from all our alms-houses and jails and houses of correction and penitentiaries,—from the thousands and the tens of thousands of their degraded, guilty, wretched inmates ; a voice which comes wafted to the ear on the wings of every breeze, proclaiming what it is that leads the van and achieves the victory in all this work of moral desolation and ruin,—and our groaning country from one extremity to the other, echoes back the voice,—

“ ’Twas under my control,—  
I gave, and they partook, the tempting bowl.”

But more, perhaps, ought not in this place be said on a subject which is always a painful one ; and considering the circumstances in which, for many years past, the

writer has been placed, and witnessing what he could not fail to witness, he feels that he should be a traitor to the duty he owes to the unhappy man to whom he ministers, to the government, whose servant he is, and to his God, were he to say less.

During the year ending the 30th of September, A. D., 1837, ninety-nine persons were committed to this prison. During the last year, or the year ending the 30th of September, A. D., 1838, the number of commitments has been one hundred and fourteen—fifteen more than during the year preceding.

The number of recommitments during the past year has also been unusually large ; almost double the average number for several successive years past. To trace minutely all the causes which have operated to produce these results, will not be attempted. The paramount cause, and one sufficient to produce results even more disastrous, is well known and may be found standing out, in bold relief, in the disclosures of the following statements, to which, as to *some of its items*, particular attention is requested.

Of the one hundred and fourteen persons committed to the prison during the last year, one hundred and eleven have been questioned with particular reference to their former character and habits ; their circumstances in life ; their advantages for mental improvement ; and what were the leading causes which led them to the commission of crime. Of the remaining three who were not questioned *two* have died since their commitment ; and the remaining *one* either is, or attempts to create a belief that he is, partially deranged.

Questions of similar, only somewhat more extended, were put during the year preceding, to more than *three*

*hundred convicts*, the results of which may be found in the chaplain's report, printed the last winter, by order of the Legislature, in connection with the customary annual reports of the institution. In all important particulars, these results agree, in a remarkable manner, with those which follow.

Of the one hundred and eleven questioned, as above stated, there were, who could read well when they came to prison,	86
Could read but poorly,	13
Could read only in easy lessons for children,	3
Could not read at all,	9
Could not write,	35
Did not understand arithmetic well enough to keep accounts,	44
Used no intoxicating drinks,	5
Occasional, and in many cases, habitual drinkers, but did not drink to intoxication,	44
Habitually intemperate—drinking to intoxication,	62
Led to the perpetration of crime by the influence of intoxicating drink,	59
Left home before the age of 21, with consent of parents,	51
Left home before the age of 21, without consent of parents,	25
When young, were put out to learn some business or trade, but did not serve out the time agreed on,	22
Have been married,	60
Have a wife living,	50
Have children,	54
Before coming to prison, had lived in habitual disregard of profanation of the Sabbath,	81
Have been addicted to gambling,	15.

Have been in the habit of companying with lewd women,	39
Lost both parents by death before the age of 21,	11
Lost father by death before the age of 21,	45
Lost mother by death before the age of 21,	20

Thus it appears, that of the one hundred and eleven persons, questioned as aforesaid, only FIVE are found who, according to their own statements, did not before coming to prison indulge to a greater or less extent in the use of intoxicating drinks.

Of the three hundred and fourteen examined the year previous, but NINETEEN claimed to be men of strictly temperate habits, all the others acknowledging that they had been addicted, more or less, to the use of this deadly poison.

In looking at the foregoing results, it can hardly escape the notice of any one, how great a proportion of all those committed to prison had lived, previously to their confinement, in habitual violation of the Sabbath. And here it ought to be stated, that a very great proportion of this class of men have spent their Sabbaths at taverns, and tippling-houses, and in scenes of riot and dissipation ; and have been there trained for the vices and crimes which have followed.

The subject of *recommitments* to this prison, during the past year, to which reference has already been made, will now be considered.

The number of this class of prisoners is *twenty-five*. It is exceedingly mortifying and painful to be under the necessity of presenting to the public such a result. But while we are pained, we are gratified that the number is not even greater ; that some, even many, escape the snares which at every step of their progress are spread for



their feet. How undeniable is the fact, notwithstanding all that patriotism and christian philanthropy have done, and are still doing, to fit the inmates of our prisons, after they shall have been set at liberty, for usefulness and for happiness ; that the destroyer is abroad ; that he has his station at almost every corner of our streets ; that in the character of the deceiver and the tempter, he presents himself in his thousand Protean forms to allure, to corrupt and to bring back again under his subjection and control, those who, for a season, have thrown off his yoke and broken the cruel fetters with which they had once been bound. No thanks, then, to the destroyer, that many more of the victims of his devices and his cruelty, have not been thrust back, to drain still deeper, even to the very dregs, the bitter cup of degradation, and bondage, and wretchedness.

In order, as accurately as possible, to ascertain the causes which led to crime and consequent conviction, on the part of those who have been recommitted to the prison the past year, three classes of questions have been proposed to each individual of said number, now living, viz. *twenty-four*, one having died soon after his recommitment. These questions are the following :

**First Class.** Have you used intoxicating drinks since your discharge ?

Have you been in the habitual use of such drinks ?

Did the use of such drinks, in your opinion, lead to the commission of the offence or offences which led to your conviction ?

**Second Class.** Did you after your discharge from prison find any serious difficulty in getting employment ?

Did you commit crime because you could find no lawful employment by which you could procure a support ?

**Third Class.** Previously to your leaving the State Prison, did you make any arrangement with any fellow-prisoner to meet you, after he and you should be discharged, for the purpose of committing crime of any sort?

Was any person, who had been a fellow-prisoner, connected with you in the commission of the offence which resulted in your recommitment?

The following are the results of the inquiries made as aforesaid. The points embraced in the questions proposed, with the order in which they stand, should be kept distinctly in the mind. The several cases will be designated by numbers.

**No. 1.** For many months after leaving the prison, he was strictly temperate. No intoxicating drinks were to be obtained in the town where he lived; got along well. After a while he went into another town to live. One day he went into a store where liquor was sold, was there invited and urged to drink, and was foolish enough to give way to temptation. After getting a taste, his old appetite returned, which soon became uncontrollable, and he again became an habitual drunkard; and it was this habit which led him to crime, and brought him back to the prison.

Says he never found any difficulty when sober in getting profitable employment; and that a want of employment had nothing to do with the commission of the offence which caused his recommitment.

Before his discharge from prison, never made any arrangement with any prisoner to meet him after discharged, nor had any associate in the offence which he committed.

**No. 2.** After his discharge, he drank occasionally; and in connection with this, used a great deal of opium,—and

it was while under the influence of opium and strong drink that he committed his crime.

Never found any difficulty in getting employment.

Says he never made any arrangement with a fellow-prisoner, before leaving prison, to meet him for any purpose, nor was any one connected with him in his offence.

No. 3. Drunked occasionally; and had it not been for liquor, says he should not be now in prison.

Found no difficulty in getting work.

No arrangement ever existed between him and any fellow-prisoner to meet after discharge; nor was any one associated with him in the crime which led to his recommitment.

No. 4. After leaving the prison, became intemperate. Used to get drunk on cider, and was under a cider-excitement when he committed the crime of which he was convicted.

Found employment without any serious difficulty, and was not tempted to sin from lack of employment.

Never made an agreement while in prison, with any prisoner, to meet outside; nor was any one connected with him in his offence.

No. 5. Was habitually intemperate, and it was intemperance which led him again to crime and to prison.

Want of employment had no agency in getting him into trouble.

No arrangement ever existed between him and any other prisoner, to meet after they should be discharged,—nor while at liberty, was he concerned with any.

No. 6. Drunked habitually, and to excess; and this was the leading cause of his running again into crime.

Never found any such difficulty, in obtaining employment, as to tempt him to the commission of crime.

Before discharge, no prisoner ever agreed to meet him, nor after discharge, was any one concerned with him.

No. 7. Says he used no intoxicating drink whatever. Had employment enough, and was not tempted to do wrong from lack of means to live.

No understanding ever existed between him and any other convict to meet after discharge; neither did he company at all, with any such. Says he is not legally guilty of the offence alledged against him, and ought not to be here.

No. 8. Was in the habit of using strong drink to excess, and to this owes his present unhappy condition.

Found employment enough without difficulty, whenever he was in a condition to work.

Before leaving prison, no arrangement was ever made to meet a fellow prisoner outside; nor did he ever meet one for any unlawful purpose.

No. 9. After leaving prison, became a miserable drunkard; and it was the habit of drinking that brought him again to prison.

Never found any difficulty in getting business, when he was sober.

No arrangement was ever made, while in confinement, to meet any other prisoner, after being set at liberty; nor was any one connected with him in his offence.

No. 10. After discharge from confinement was in the habit of drinking to excess, and was under the influence of strong drink, when the offence, which brought him to prison, was committed.

Was not led to the commission of crime, by any want of employment.

Never had any understanding with any prisoner to meet

after discharge from prison ; nor was any one associated with him in his offence.

No. 11. When he was out, drank hard ; drink brought him back to prison.

Found no difficulty in getting honest employment. While at liberty, was concerned with no one he had known in prison, in the commission of crime ; and never made any arrangement, while confined, with any one to meet him for any purpose.

No. 12. Drank habitually and to excess ; and had it not been for this habit, is confident he should not now be here.

Found business enough outside to support him without resorting to crime.

Never had any understanding with any prisoner, while in confinement, to meet, after they should be discharged ; nor was any one he had known in prison, associated with him in the crime which brought him back here.

No. 13. Drank habitually ; and to this owes his recommitment.

Never found any difficulty in getting profitable employment when he was disposed to work.

Never made any arrangement for meeting, with a fellow-prisoner ; nor was he connected with any in his offence.

No. 14. For years, after his discharge, was in the habit of using strong drink, and, often, freely ; but not to intoxication. Does not think that drink was the cause of his doing as he did. Other causes, rather than this, led him to commit the offence for which he is suffering.

Was never troubled to get honest employment, and of course, did not sin from this cause.

No person was associated with him in his offence ; nor

did he, during his confinement ever have any understanding with any prisoner to meet him after his discharge.

No. 15. During the time he was out of prison, he drank habitually and intemperately; although, he cannot say that this was the cause of his getting back again.

Found no difficulty in getting employment, and that which was profitable.

Never made an arrangement with a prisoner, to meet after discharged; nor was any such person concerned with him in the transaction which occasioned his present troubles.

No. 16. Drank, occasionally, when out, but always in moderation. Was not led to the commission of his offence by the use of strong drink.

Although, at times, he found it somewhat difficult to get employment, this fact had no influence on his mind in leading him to crime.

No understanding ever existed between him and any other prisoner, to meet outside, nor was any one concerned with him in any of the violations of law, of which he was convicted.

No. 17. While at liberty, drank freely, and was in liquor when he committed the crime which brought him back.

Met with no embarrassment in finding employment, and was not tempted to sin from this cause.

When he left the prison no understanding existed between him and any other prisoner, in regard to meeting, when at liberty; nor was any one associated with him, in his offence.

No. 18. While out of prison, drank hard; and it was drink which brought him back to prison.

When disposed, always found employment enough while at liberty.

No arrangement for meeting, outside, was ever made by him with any prisoner, during his confinement; nor was he concerned with any one in his offence.

No. 19. This man died soon after his recommitment. He had been several times in prison before this. He is known to have been accustomed to the free use of strong drink before his recommitment. As he was not interrogated before his death, nothing can be stated as coming from himself.

No. 20. During the time he was out of prison, was strictly temperate, using no intoxicating drink.

Met with no trouble on the score of employment, and of course, cannot plead this in excuse for his sin.

Before leaving the prison, he had a secret understanding with a fellow-prisoner, who was to be discharged about the same time with himself, to meet him in the City, but not for any unlawful purpose. They did meet, but soon separated; and he afterwards saw him no more. He was alone in his crime.

No. 21. While at liberty, which was several years, he drank habitually, but not to intoxication. Says he was not guilty of the offence of which he was convicted, and of course, the use of intoxicating drink did not, if he says true, lead to the commission of crime, in this instance.

Could always find employment when he wished it.

Before leaving prison, made no arrangement with any prisoner to meet him on his release.

No. 22. After his discharge, very soon got into his old habit of drinking to excess; and to this cause owes his downfall and return to prison.

While at large, found regular employment at his trade without difficulty ; and did not sin from any necessity.

Never entered into any arrangement with any prisoner before his discharge to meet afterwards ; nor was any one concerned with him in his offence.

No. 23. While at large, drank occasionally, but not to intoxication. Says no one can charge him with being the worse for liquor while he was out ; and avers that liquor did not get him here. Says he is not guilty and ought not to be here.

Found business enough, while out, and worked well. Never had any understanding with any prisoner, to meet him, when at large, and had no connection with any, during the time he was at liberty.

No. 24. For sometime after his discharge, he avoided strong drink, and got along well. After a while, was urged by a fellow, to drink ; and, finally, to please him, did drink, and got rum-crazy. That very night, broke into a shop and stole. The next day was apprehended, and soon after, sent back here again.

While out of prison, found work enough, without any trouble.

No understanding ever existed between him and any other prisoner, to meet, after their discharge, nor was any one concerned with him in the offence he committed.

No. 25. During the time he was at liberty, says he did not indulge, at all, in the use of intoxicating drinks.

Was never troubled to find employment, because he neither wished for it, nor sought it. Presumes he might have found regular employment, had he made an effort.

Before his discharge, had an understanding with one or two other prisoners, who were to leave the prison about the same time with himself, to meet, after their



discharge, for the purpose of acting together in the commission of crime. They did meet, as agreed, and he had their company and aid, in the crimes which brought him back to prison.

The subscriber would, by no means, be considered as vouching for the perfect accuracy, in all particulars, of the statements made by the individuals questioned as above. Still, his acquaintance with these men, and the knowledge he has in regard to most of them, lead him to believe, that they do not, as a whole, vary, materially, from the truth.

There can be no doubt, that discharged convicts, sometimes meet with very serious difficulties in finding suitable employment; and from this cause, are induced to resort to unlawful means for the supply of their necessary wants. But this is, by no means, the cause, which, *usually*, leads them to the commission of crime. It is wished that the public, to a far greater extent than they do, felt the importance of extending to this class of men, on their discharge from prison, (unless very special reasons exist to warrant the contrary,) a helping hand in procuring lawful employment, by which they might procure a comfortable subsistence. Should they then go astray, and thus violate, not only the laws of the state, but the law of kindness and christian charity, the responsibility and guilt must rest wholly on themselves.

In regard to those recommitted the past year, if their statements are to be credited, no one was led to the commission of crime, from any insuperable difficulty in finding lawful employment. Had inability to find labor, led to a violation of the **Laws** of the State, no reason would have

been so likely to be given ; as this would afford a plausible excuse or palliation for a deviation from the path of virtue.

Again ; it is not maintained, that it is an uncommon thing for those who commit crime to have associates in their guilt. The reverse is the fact. After all, it is unquestionably true, that much the greater proportion of those who commit offences, punishable by the statute, have no immediate associates, and act without any concert with others, as circumstances and temptations may prompt ; and this, in an especial manner, where the offences are comparatively trivial, and marked by no peculiar aggravation.

From the knowledge which the writer has of most of the persons recommitted the past year, and of the nature and circumstances of the crimes of which they were convicted, he feels a good degree of assurance, that the statements made by them in regard to associations with others, in the perpetration of crime, are, substantially, and in most cases, correct. Only a single individual states that he was thus associated. Their aberration from virtue, therefore, is not, to any great extent, to be ascribed to the influence of associates with whom they had connected themselves for unlawful and wicked purposes, and whom they had known, previously to their discharge from prison.

In the third place, it appears that *only three* of the twenty-five persons who were recommitted, as above, were strictly temperate. *Twenty-two* were more or less addicted to the use of intoxicating drinks. Of this number of twenty-two, *twenty* were habitual drinkers, and drank to excess ; and of the twenty, *sixteen* ascribe their return to crime and to prison, to this brutalizing and ruinous habit.

In conclusion, the subscriber would remark, that he feels he should neglect an important duty, were he to pass, without notice the kindness and support, which, in the discharge of his appropriate duties, he has uniformly received from the honorable Board of Inspectors, the Warden, and all the subordinate officers of the Institution.

JARED CURTIS,

*Chaplain Mass. State Prison.*

STATE PRISON, Charlestown, Dec. 17, 1838.

*To His Excellency EDWARD EVERETT, Governor of the Commonwealth of Massachusetts, and to the Honorable Council :*

**GENTLEMEN :—**The number of patients admitted to the Hospital of this institution, during the year ending 30th September, 1838, has been 218. The aggregate number of days' residence in the hospital has been 3238. To this should be added 412 days, abated to invalids, and 1076 days of light labor.

Seven have died, viz. three of pulmonary consumption ; one by suicide ; one of pneumonia ; two at 69 and 78 years of age ; these were veterans in crime as well as years, and may be said to have died of old age, having no marked disease upon them at the time of death.

During the year, one man has, in the estimation of the physician, become insane. It is worthy to remark, that this is only the second case of insanity which has occurred in this penitentiary during the last ten years. In a large number of cases of pretended insanity, which have occurred during the same time, the deception has been clearly and speedily exposed, and the culprits compelled to return to duty ; and this has been effected without resorting to any unusually harsh or severe means.

By reference to the obituary, it will be seen that three of the seven deaths have been of pulmonary consumption. Large as this proportion may appear, I believe it is not above what is afforded by other penitentiaries, or our own. For I find that out of 23 deaths which have occurred during the last five years, 10 have been of this complaint.

This fact should, and has led the physician to reflect upon the causes which are bringing about such results, and how they may be obviated. In the first place, he has not been able to trace this complaint to any discipline or employment of the prison, but would, with great deference, offer the following observations on this subject, viz. That the most extensive pathological observations in climates like our own, warrant the belief, that almost a moiety of mankind possess that organization of lungs which predispose them to consumption, whenever the proximate causes shall be applied in sufficient intensity. That among the causes most likely to produce consumption in those predisposed, none are more powerful than a dissipated and profligate course of life, a despondent state of mind, and close and protracted confinement. Let us then compare the ten deaths above referred to, with these observations. First, we find by the prison records, that one of this ten had been confined 1 year and 9 months; one 2 years; one 2 years, 9 months; one 3 years; one 4 years, 4 months; one 5 years; one 10 years, 4 months; one 13 years, 6 months; one 14 years, 5 months, and one 24 years, 2 months. Again—of this number, three were on their first commitment, four on their second, two on their third, and one on his fifth. Again—three of this number entered the prison with the disease fixed upon them, while a careful examination of the list of pardons for the time above alluded to, warrants me in saying, that no one has received the Executive clemency during this time, who was sick of consumption or any other disease threatening his life.

Now, since it is universally admitted that the surest means of obviating any tendency to consumption, are cheerfulness, temperance, frequent and varied exercise in open

air, with frequent change of place of residence,—may we not infer, that the converse is likewise true, and that the facts above alluded to in the premises will justify the belief, that in proportion as imprisonment is severe or protracted, as it deprives its subjects of the advantages of open air, of change of place, of varied exercise and employment, of the sympathy of kindred, and the cheerfulness of liberty, it will develop any tendency that may exist towards consumption.

Once more ; by comparing the annual average number of deaths for five years with the number of convicts, we find the mortality to be, one in sixty-one and two thirds, being less than is common in the towns of Massachusetts. Thus showing that in this institution the unfortunate convict is upon the whole, in less danger of death than when he had his life under his own guardianship.

All which is, with the greatest deference, most respectfully submitted, by

WILLIAM J. WALKER,

*Physician Mass. State Prison.*

MASS. STATE PRISON,

*Charlestown, 30th Sept., 1838.*

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*Obituary for five years, ending 30th September, 1838.*

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Average No. of Convicts.	No. of Deaths.	
256	4	1833, Nov. 2, J. G.—Dec. 21, J. W. B.—1834, May 23, T. M.—September 19, C. W.
287	3	1834, October 4, J. Q.—October 13, J. F.—1835, September 21, E. S.
285	4	1835, October 14, W. H. R.—November 11, M. B.—November 20, A. C.—1836, June 10, T. L.
288	5	1836, October 11, A. T.—1837, January 10, P. T.—February 1, J. C.—June 25, T. F.—July 17, G. W. alias J. P.
303	7	1838, February 1, M. B.—March 22, G. W.—April 28, J. McG.—June 25, W. W.—July 9, A. J.—August 5, M. B.—September 2, J. B.

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**SENATE....**

**....No. 3.**

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**THE**  
**ATTORNEY GENERAL'S**  
**ANNUAL REPORT.**

**1889.**

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# Commonwealth of Massachusetts.

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*To the Honorable Legislature :*

THE official business done by the Attorney General for the year ending on 31st October, 1833; "the suits and prosecutions to which he has attended; the number of persons prosecuted; the crimes for which, and the counties where had; the results thereof, and the punishments awarded therefor," are presented in the following

## R E P O R T :

1837. November 2. Commencement of proceedings in relation to a claim on the part of the Commonwealth, for the effects of the late Dr. Dyres, supposed to have died in the county of Norfolk, intestate and without legal heirs.

Nov. 4. Commonwealth vs. Edwin H. Blanchard, indicted in the County of Suffolk for the crime of fraud in obtaining property by false pretences, and with having fled beyond the jurisdiction of this Commonwealth. Case examined according to the provisions of the Revised Statutes, chap. 142, sec. 6, on an application made to the Governor, for a requisition on the Governor of New York to deliver the said Blanchard as a fugitive from justice.

An abstract of the evidence, and all material circumstances prepared and reported to the Governor, with "an

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opinion as to the expediency of making such demand," as the statute requires.

**Nov. 7. Supreme Judicial Court for the County of Essex. Commonwealth vs. Benjamin Kimball, indicted for violating the victuallers' licence law; convicted at the Common Pleas. The case brought before this court by the defendant on a Bill of Exceptions to the charge of the Judge in the court below, declaring the said law to be conformable to the constitution of the United States and of this Commonwealth. Questions of law argued.**

**Commonwealth vs. Oliver Blackington. Indictment and Bill of Exceptions as above, with certain other questions on the form of indictment, admissibility of testimony and amount of proof. Argument opened.**

**Nov. 8. Arguments in the above continued and closed.**

**Commonwealth vs. Samuel Thurlow. Indictment and Bill of Exceptions on the constitutional questions as above, and other questions of form and of testimony. Argued.**

**Nov. 9. Commonwealth vs. Samuel Thurlow. Indictment and Bill of Exceptions as above, with other questions in relation to the proceedings below. Argued.**

**Commonwealth vs. Benjamin Kimball. As above, with variation in the technical questions reserved. Argued.**

**Commonwealth vs. Benjamin Kimball. As above, to abide the decision in the case first mentioned.**

These cases, after argument before the full bench were continued for advisement, and at the term of the Court holden in May last, an opinion was pronounced, affirming in the fullest extent, the constitutionality of the license laws, and thus putting at rest a question which had been the subject of much litigation in various parts of the Commonwealth.

Nov. 13. Consultation with the District Attorney of the Middle District, on the proceedings in regard to a person arrested for Robbery. R. S. ch. 13, s. 31.

Nov. 15. Case of Samuel Sears Moore, charged in New Hampshire with having knowingly passed counterfeit money, on application from the governor of New Hampshire for an Executive process against the said Moore as a fugitive from justice Examined.

Nov. 16. Report and opinion prepared and transmitted.

Nov. 16. Further proceedings in claim vs. Administrator of the estate of Dr. Dyres.

Nov. 17. Attended the taking of the deposition of the Hon. William Parmenter, to be used in the case of Commonwealth vs. Town of Cambridge.

Nov. 18. Examination of the case of Henry Bliss on a requisition made by the Governor of New York, for the Executive process of this Commonwealth to arrest and deliver the said Bliss as a fugitive from justice.

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**Nov. 19.** Facts and opinion reported. Process postponed.

**Nov. 20** Examination of the Books, &c. reproduced by a summons issued on the 18th, to the Overseers of the Poor, Town Clerk, and Keeper of the Alms-house, of the town of Cambridge.

**Nov. 24.** Trial of the issue between the Commonwealth and the town of Cambridge in the Supreme Court. Verdict for the Commonwealth, subject to the opinion of the Court on questions of law.

**Nov. 25.** Report of the questions reserved, prepared for examination of the Court.

**Nov. 26.** Report of the adverse party presented and considered.

**Nov. 29.** Consultation with, and written opinion given to the District Attorney of the Middle District, at his request, R. S. ch. 13, s. 31, on the construction of the R. S. ch. 136, s. 27.

**Dec. 1.** Supreme Judicial Court held by the Judges informally for considering an application made by the counsel of Samuel S. Maynard indicted for murder, for a postponement of the case. Discussed. Postponement ordered.

**Dec. 2.** Claim filed with the Judge of Probate for the County of Norfolk, for a Decree in favor of the Com-

monwealth, for the assets in the hands of the administrator of Gerard Dyres.

Dec. 5, 6, 7. Writs made against several Banks, Auctioneers, and their bondsmen.

Dec. 12. Supreme Judicial Court, Middlesex, Commonwealth vs. Samuel S. Maynard. The case had been postponed to this day. Motion for continuance on the part of defendant. Granted by Court. Witnesses recognized for their appearance at the next term in Lowell.

Dec. 18. Supreme Judicial Court, Hampden County, Commonwealth vs. Charles Woodford for Murder. Trial commenced and continued through the day.

Dec. 20. Trial proceeded. Verdict guilty.

Dec. 20. The Judges opened a special Court, according to the Statute, for the trial of Jesse Hall, Jr., for Murder. Jury impannelled, and trial commenced.

Dec. 21. Trial proceeded.

Dec. 22. Trial proceeded.

Dec. 23. Trial proceeded.

Dec. 24. Trial proceeded.

Dec. 25. Trial proceeded.

Dec. 26. Verdict, Guilty. Motion in arrest of judgment: Argued. Overruled.

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**Sentence of death pronounced upon Charles Whitford.**

**Same upon Jesse Hall, Jr.**

**Dec. 28. Commonwealth vs. Asa Hayden. Indicted for Larceny ; and charged as a fugitive from justice. Examined on application for an Executive requisition to the Governor of New York, and facts and opinion certified.**

**Dec. 29. Examined the case of John Campbell, charged in Maine with arson, and demanded by the Executive authority of that state as a fugitive from justice. Facts stated, and an opinion in writing sent to the Governor in favor of a conditional warrant of arrest.**

**Memorandum. The Attorney General was absent from the Commonwealth from the 8th January to 9th February, on the business of the Commonwealth in the case pending in the Supreme Court of the U. S. by Rhode Island vs. Massachusetts.**

**1838. February 19. Received an order from the Governor to examine the circumstances connected with Henry A. Atkins, charged with fraud, and with having fled from justice, on an application for an executive requisition to the Governor of the State of Maine, for his arrest and surrender for trial in this Commonwealth. Examination commenced.**

**February 21. Examination closed. The party accused was a citizen of Maine. Opinion given to the Governor in favor of issuing the requisition.**

Feb. 21. Received an order from the Honorable Senate to inquire into the title of the Commonwealth to the Province lands, so called, in Provincetown, and whether its right to any portion is lost by the undisputed occupancy of any of the inhabitants.

Feb. 24. Received an order, passed by both branches of the Legislature, to attend any committee thereof who were appointed for the examination of any bank, in the Commonwealth, whenever required by such committee, accompanied by an order of the committee on the Kilby Bank to attend its session on 27th instant, and an order of the committee on the Middlesex Bank to attend its session on 1st March.

Feb. 24. An opinion in writing concerning the Province lands having been prepared, was delivered to the Honorable Senate.

Feb. 27th. Attended the committee on the affairs of the Kilby Bank.

Feb. 28. In pursuance of an order of the committee on the affairs of the Commonwealth Bank, attended the session of the committee. Session adjourned to 12th March.

March 1. Attended the committee on the affairs of the Middlesex Bank.

March 6. Probate Court for Norfolk County, Commonwealth vs. Milton Durand, Administrator of G. Dyres, the case postponed to 10th inst.

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March 7. Attended the committee on the affairs of the Kilby Bank. Hearing further postponed.

March 8. Received an order from His Excellency the Governor to examine two communications from the Governor of the State of Maine in relation to the former requisition from this Commonwealth for a supposed fugitive from justice, and to report thereon.

March 9. Communication from a committee of the Executive Council as to the state of the Commonwealth's liabilities to the Norwich and Worcester Rail-road, with directions to prepare an opinion in regard to the same. Conference with the agent of that company, correspondence with the Register of Deeds in county of Worcester.

March 10. Probate Court, Norfolk. On application in behalf of the Commonwealth for the decree in the case of Dr. Dyres' estate in hands of administrator. Examination of administrator's account. Balance ascertained. Hearing of evidence on claim of Commonwealth. Claim allowed, and decree made accordingly.

March 12. Opinion in writing delivered to the chairman of the council on the matter of the Norwich and Worcester Rail Road.

March 12. Supreme Judicial Court, Suffolk. Commonwealth vs. James Tuck, appellant. Motion to dismiss the appeal, &c., argued.

Same vs. Charles Watson, same—same.



March 12. Attended the committee of the Legislature on the Commonwealth bank.

March 13. Consultation with the District Attorney of the Northern District, concerning the question of process *de novo* before the Grand Jury, in case of an indictment for murder.

March 13. Attended the committee of the Legislature on the subject of Charlestown and Warren Bridges, by their order.

March 14. Attended the above committee at their meeting this day.

March 15. Attended the same committee.

March 16. By order of a committee of the Executive Council, attended them with the agent of the Norwich and Worcester Rail-road.

March 19. Settled the Commonwealth's claim against Milton Durand, administrator of Gerald Dyres, and received, according to the decree of the Judge of Probate, the sum of \$5260 76.

March 19. Received an order from the Hon. House of Representatives, to make report, concerning certain matters in relation to charitable institutions, &c.

March 20. Received an order from His Excellency

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the Governor, to examine and report on the case of James Day, a fugitive from justice.

Examination and report subsequently made as required.

March 23. Attended the committee on the affairs of the Roxbury bank, by their order. Further testimony produced by the bank, and the case adjourned to 27th instant.

March 29. Question in regard to the legal claim of the Commonwealth to offset the demand for a tax upon an insolvent bank, against so much of a note given for money borrowed, as would pay the tax ; the note not being payable to order, but in fact having been negotiated in good faith.

The subject was presented by the Treasurer of the Commonwealth, and an opinion of the law given at his request.

April 2. Supreme Judicial Court. Commonwealth vs. Abner Kneeland, indicted for blasphemy. Opinion of the court on the questions reserved at the trial, delivered by the Chief Justice, and the exceptions taken by defendant overruled. Sentence postponed at defendant's motion.

April 4. Consultation with the District Attorney of the Middle District on a series of cases under the license laws.

Paid to the Treasurer of the Commonwealth the sum of five thousand two hundred and sixty dollars and seventy-six cents, being the whole amount of the judgment

and decree of the Probate Court in the case of Commonwealth vs. Milton Durand.

April 5. Consultation with the District Attorney of the Northern District on questions arising in the prosecution of a person absconding, and presumed to be in Canada.

April 6. In Supreme Court, the argument in the case of Commonwealth vs. Cambridge, commenced.

April 7. In relation to sentence on Abner Kneeland, the defendant was heard, and the Attorney General in reply.

The argument in Commonwealth vs. Cambridge was concluded.

April 11. Supreme Judicial Court for Middlesex, at Lowell. Commonwealth vs. Wm. Graves, for murder. Defendant arraigned. Counsel assigned by the court. Trial appointed for 4th June.

April 13. Received from the Treasurer of the Commonwealth a list of twenty-eight banks delinquent in the payment of the semi-annual tax, to be proceeded against for the recovery of the sum due,—and suitable measures from time to time taken thereon for this purpose.

April 16. The case of the Commonwealth vs. Henry Atkins, as a fugitive from justice, having been for some time under consideration, and sundry communications between the Executive departments of Massachusetts and

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Maine having been placed in the hands of the Attorney General, with directions from the Governor to report on the construction of constitutional law involved in the case ; and on the proceeding of the agent of the State charged with the requisition formerly issued, a report was prepared, and was this day delivered to His Excellency.

April 17. Received for examination the draft of a bond in the penal sum of two million one hundred thousand dollars, and the instrument of conveyance as collateral thereto, made by the Western Rail-road Corporation.

April 23. Probate Court, Suffolk. Commonwealth, applicant for a decree in the case of John Wilson alias Peterson, an alien, supposed to have died without heirs. Hearing in part.

April 28. The bond and conveyances of the Western Rail-road approved and delivered to the agent of the corporation.

May 3. Order received from the Governor to examine the case of Josiah Gilmore demanded as a fugitive from justice by the Governor of New York, and under arrest in Hampden county, for passing counterfeit bills in this Commonwealth.

May 4. Received the plan of proceedings intended to be adopted by the Nashua and Lowell Rail-road Corporation, as preparatory to the execution by them of such legal instruments as might be required, to entitle them to obtain the advance of money under the law recently enacted,—for examination and advice.

May 7. Received from the Treasurer a list of ninety persons, debtors to the Commonwealth, as promissors or guarantors, or co-sureties on promissory notes in his office on which principal or interest remained due—to be proceeded with according to the Revised Statutes, chap. 13, section 25.

Such measures were accordingly pursued. But for the circumstances connected with these demands, and the means of proceeding in them for the greater security of the Commonwealth's rights, I respectfully ask leave to refer to the same subject in my last annual report at pages 11 and 12, as printed in the documents of the Senate.

May 9. The case of Josiah Gilmore having been investigated, an opinion was prepared and sent to the Governor, according to his direction on 2d.

May 12. Consultation with the District Attorney of the Northern District, on the cases for trial before the Supreme Court at Lowell, on 4th proximo, and especially with regard to measures for procuring the attendance of absent and absconding witnesses.

May 14. Probate Court, Suffolk County. Further hearing in case of John Wilson, deceased.

May 16. Received the draft of a bond in the penal sum of one hundred and eighty thousand dollars, and conveyances collateral thereto, prepared by the Eastern Railroad Corporation, for advice and direction in order to obtain an advance of money from the Commonwealth under the law recently enacted in their favor.

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May 17. Further consultation with the District Attorney of the Northern District, to make arrangements for the trial of Wm. Graves in the absence of the absconding witnesses. New witnesses to be sent for, and other efforts to supply the deficient testimony.

May 21. Probate Court, Suffolk County. Further proceedings on the claim of the Commonwealth in the case of the administrator of Wilson, deceased.

May 25. Commonwealth vs. John G. Copp, charged with larceny, and being a fugitive from justice. Case examined on an application for an Executive requisition to the Governor of New York, and report and opinion certified accordingly.

May 26. The bond and mortgage of the Eastern Rail-road Corporation finally approved and certified.

June 2. Commonwealth vs. Frederic G. Williams, prosecuted in Suffolk for forgery. Application for an executive warrant to the Governor of the State of Alabama for his arrest and surrender as a fugitive from justice. Case examined and report made.

June 4. Supreme Judicial Court, by special adjournment at Lowell. Commonwealth vs. Wm. Graves, for murder. Motion to postpone on account of absent witnesses made by the counsel of the Commonwealth. Granted by the court—9th July assigned for trial.

Commonwealth vs. Samuel S. Maynard, for murder. Trial commenced and continued through the day.

June 4. Trial proceeded.

June 6. Trial proceeded, and was finished. Verdict, guilty of manslaughter. Sentence, three days solitary imprisonment, and three years hard labor in the State Prison.

June 7. Commonwealth vs. Isaac Pollard, charged before the Police Court at Lowell, with being accessory to murder, and with being a fugitive from justice. Application to the Governor for Executive requisitions to the Governors of Pennsylvania and New York, for his arrest and surrender ; and a state of facts and opinion certified accordingly.

June 11. Supreme Judicial Court, by adjournment in Suffolk. Commonwealth vs. Richard Hildreth, indicted for libel. Special plea in abatement and appeal from the judgment of the Municipal Court thereon. At the motion of the Attorney General, the appeal dismissed as having been improvidently taken.

Commonwealth vs. Asahel B. Mott, appellant, from a judgment of the Municipal Court, for second sentence to State Prison. Submitted without argument. Prisoner remanded. Continued for advisement.

12. Instructions prepared by direction of the Governor, to the Agent of the Commonwealth entrusted with the Executive requisition to the Governor of Alabama, for T. G. Williams.

June 13. Received from the Treasurer a list of fifty-three delinquent Auctioneers, for process against themselves or their Bondsmen, as provided by law. Measures

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were accordingly taken, for this purpose, first in all cases by letter, and where that was ineffectual and the case required it, by action at law. In the course of the year, most of these cases have been adjusted at the Treasury.

June 15. Received for examination the Record of the proceedings of the Nashua and Lowell Rail-Road Corporation, and the draft of a Bond, and other instruments prepared under directions given by me to the Agent of the Company for the purpose of receiving the money to be advanced by the Commonwealth.

June 18. In Supreme Judicial Court, Suffolk. Commonwealth vs. Abner Kneeland. Defendant sentenced to sixty days imprisonment in the common jail.

June 19. The Bond Mortgage and Records of the Nashua and Lowell Rail-Road Corporation having been examined, were approved, certified, and delivered to the Treasurer.

June 19. Supreme Judicial Court, Suffolk. Commonwealth vs. James B. Tuck, Appellant. Motion in arrest of judgment, after conviction of aggravated larceny. Argued. On the 25th, the opinion of the Court was pronounced. Further proceedings had. Sentence postponed, on defendant's motion, to 27th. Further argument on the construction of the law in regard to punishment. On 29th, the opinion of the Court was pronounced on this part of the case, and the prisoner was sentenced to 3 days solitary confinement, and 5 years hard labor in the State Prison, as a common and notorious thief.



It will illustrate the remarks in a subsequent part of this report, to advert to the fact, that, in the progress of this case, the prisoner was brought from the jail, to the Court House, thirteen several times.

June 25. Case of Gilmore, in Hampden County, further attended to, by request of the Sheriff having him in custody.

June 25. The opinion of the Supreme Court in the case of Commonwealth vs. The Town of Cambridge, on the questions reserved, was this day delivered. The verdict was set aside, and the rules for estimating the accounts between the town and the Commonwealth were defined.

The case stands for a new trial, on principles favorable to the claim of the Commonwealth, for a considerable part of the sum supposed to have been over paid to the Town.

June 26 and 27th. The proceedings of the Agent of the Commonwealth, sent with an executive requisition, to the state of Maine, in the case of Atkins having been the subject of complaint, by the Governor of that State, were referred to the Attorney General, for examination, and such measures as the circumstances rendered proper. Examination, thereof, was accordingly had. The explanations of the Agent received, and communicated with the Attorney General's opinion, to His Excellency the Governor of this Commonwealth.

July 2. Received from the Chairman of a Committee of the Executive Council, a request to examine and prepare an opinion on the legality of a certain military elec-

## 20 ATTORNEY GENERAL'S REPORT. [Jan.

tion, and the petition and remonstrances thereon ; which opinion was subsequently sent to the Committee.

July 3. The Treasurer of the Commonwealth represented the necessity he was under of obtaining further legal advice in regard to certain measures connected with his official duties, and the public interest, and stated certain questions on which he desired an opinion, in regard to the law. The same were considered, and at a subsequent day, an opinion was submitted.

On this matter, and the general subject of which it is a part, reference is respectfully made to the Attorney General's last annual Report, pages 23 and 24.

July 6. Case of Commonwealth vs. J. C. Brodhead, indicted for embezzlement, and charged with being a fugitive from justice. Proceedings had, on an application for an Executive requisition, to the Governor of New York.

July 7. Proceedings had in consequence of a communication from the Agent of the Commonwealth, at Mobile, charged with an Executive requisition for Williams.

July 9. Supreme Judicial Court, at Lowell. Commonwealth vs. Wm. Graves. Motion made on part of the Commonwealth, for a continuance by reason of the absence of a material witness, and the efforts to prevent his attendance made by some unknown person. Witnesses examined to this point, and the motion sustained.

July 11. Arrangements made in New York, Pennsylvania, and New Hampshire in regard to the above.

**July 14.** Commonwealth vs. Asa A. Brown, charged with fraud, and as a fugitive from justice, on application for an Executive requisition, to the Governor of North Carolina.

Interrogations in writing to Applicant. Answers obtained. Facts and opinion, certified.

**July 18.** Case of Josiah Gilman, at Hampden, indicted for passing counterfeit money, and demanded as a fugitive from justice by the Governor of New York, further considered at the request of the Sheriff of that county.

**July 26.** Further correspondence as above. Suspended as to final action by his subsequent escape from prison.

**August 7.** Examination of the bill of costs presented by counsel of Maynard to be taxed and paid by Commonwealth.

**Aug. 9.** Commonwealth vs. Brazillai Perkins, charged with larceny, and as a fugitive from justice. Application for an Executive requisition to the Governor of N. York.

**Aug. 10.** Facts and opinion reported to the Governor on the above case.

**Aug. 26.** Commonwealth vs. Moses B. Goodwin. Larceny. Fugitive from justice. Application for Executive requisition to the Governor of Maine. Facts examined. Opinion given against the application.

**September 3.** Consultation with the District Attorney

## **22      ATTORNEY GENERAL'S REPORT.    [Jan.**

**of the Middle District, on the case of Davis, in custody on a charge of murder.**

**Sept. 11.    Supreme Judicial Court, Hampden County. Commonwealth vs. William F. Reed, appellant, for perjury. Commonwealth vs. Lydia Ann Reed, appellant, for same. Jury empannelled and trials commenced before same pannel.**

**Sept. 12.    Trials proceeded.**

**Sept. 13.    Trials proceeded. Verdict, not guilty.**

**Sept. 25.    Examination of the cases of Edward Salzman and Geoffrey Leeford, charged with store breaking and larceny at New Orleans, and claimed by the Governor of the State of Louisiana, as fugitives from justice.**

**Sept. 26.    Examination continued. Report and opinion delivered to the Governor.**

**October 9.    Supreme Judicial Court, Worcester. Commonwealth vs. Townsend Willard, license law. Exceptions from Common Pleas. Argued. Continued.**

**Commonwealth vs. Squire Shove. Exceptions, &c. Argued. Continued.**

**Oct. 15.    Received from the Treasurer a list of six banks, delinquent in the payment of the tax, to be proceeded with according to the statute.**

**Oct. 16.    Supreme Judicial Court, Middlesex. Com-**

monwealth vs. William Graves. The witnesses who attended according to recognizance or summons, further recognized to appear on 4th December, and trial assigned for that day.

Oct. 29. Supreme Judicial Court, Bristol County. Commonwealth vs. Joseph Silvia, murder. Trial commenced.

Oct. 30. Trial proceeded. Verdict, manslaughter. Sentence, three days and three years in State Prison.

Commonwealth vs. Jason P. Lord, assault and battery. Exceptions from Common Pleas, as to character of a Sheriff's aid; submitted and continued for advisement.

Commonwealth vs. same, license law. Exceptions, &c. Submitted and continued.

*In explanation of the foregoing details, I beg leave respectfully to state, that the duties of the Attorney General extend to causes civil as well as criminal, in which the Commonwealth is a party, under the limitations provided by the terms of the law. This connection with the civil causes of the Commonwealth was first established as a part of his regular duty, by the statute of 1832. Before that time, civil causes in which the Commonwealth was a party, were of rare occurrence; and when they arose, provision was generally made by special resolve. The ordinary demands in favor of the Commonwealth were few, except for the collection of its taxes, and these by a very plain and summary process then in use, were enforced without any reference to the judicial tribunals.*

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The reception and distribution of the Surplus Revenue, the investment of the State's funds in rail-road corporations, and the extensive sale of its public lands on credit, have greatly multiplied the occasions for civil process in the ordinary course of law.

The statute which abolished the ancient proceedings by warrant of distress, leaves the Commonwealth to proceed in the courts of law in the manner of a private corporation, *as well for its auction and bank taxes as for its other demands*, with no priority or privilege over common suitors, whenever there is any delinquency by any one of its debtors. Hence it is, that new and pressing occasions arise for judicial proceedings by the State, not only in its character of a great owner, proprietor, and creditor, but on the part also of its principal agents, who are entrusted with the management of its property, or the preservation of its credit. It is in consequence of this new state of things that this department of the Attorney General's duty has greatly extended, as will be seen by the fact, that during the past year, one hundred and eighty-five separate causes of civil actions have been sent to him from the Treasurer or other source, to be proceeded with by suit at law, or such other manner as in his discretion should be deemed expedient; and that during this, and the preceding year, many occasions have arisen for consultation and legal advice on the part of officers of the government, growing out of the complicated relations in which the public business has been placed.

I submit this matter to the attention of the Honorable Legislature only to make known the defect in the existing provisions of law, and the need of further provisions to meet and accompany so great a change in the business of the Commonwealth.

In one class of cases, the Attorney General is directed to proceed "with due regard to the situation of the debtors," but the means of obtaining a knowledge of that situation is not at his command. In some cases, suits at law are peremptorily enjoined; but the expenses of such suits are no where provided for. By a recent statute, a defendant, prevailing in a suit against the Commonwealth, is entitled to be paid his taxable costs; yet for a preliminary examination of the case, which is always necessary to prevent such a result, no means are allowed.

The great change which was made in the form of proceeding by the Commonwealth, for the recovery of its taxes and debts, by the abrogation of the ancient Writ of Warrant of Distress, and the substitution of the ordinary process of a suit at law, was for some years hardly realized by the community.

It is now beginning to be better understood. Debtors may be expected to take advantage of it. Suits will, of course, be multiplied, and emergencies will arise in which more means may be required than are at present placed at the disposal of any officer of the government.

I had the honor of including this subject in my last annual Report, and the experience of another year induces me respectfully to repeat it on the present occasion.

In this connection it may be proper to notice the subject of FUGITIVES FROM JUSTICE, first assigned to the Attorney General, as a branch of public duty, in 1834; when it was perceived to be a growing cause of interest to the Commonwealth. More cases have probably occurred since that period, than in all the previous time since the adoption of the Constitution of the United States.

The number is thus increased by the facility of inter-

course between the States, and the policy of criminals to change their residence as soon as possible, after the commission of great crimes.

In these cases, promptness of action, when a messenger is to be sent *from* this State, and a ready attention to the business when the messenger of another state is deputed *to* the Executive of this Commonwealth, are indispensably requisite. But the process is of a high and extraordinary character, and the haste that is demanded, may not safely be permitted to supercede a due deliberation and inquiry.

The process is peculiarly liable to be abused. The security of our own citizens from harrassing and vexatious arrest, when the law does not authorize their surrender, and the power of obtaining or delivering culprits, who ought to be subjected to judicial trial, are the true objects of this process, and these cases should be carefully distinguished from those, where individual advantage and private claims for debt or contract, are the real objects of the application. In the recent very free use of this constitutional provision through most of the United States, questions have arisen within this Commonwealth that involve the most complicated and nicest points of constitutional and public law.

The duty assigned to the Attorney General, in these cases, extends very much into detail, by the Revised Statutes, ch. 142, sec. 6 and 7 ; but the means of obtaining the necessary information on the spur of the occasion, are not at his command.

During the last and preceding years, the Legislature has been pleased to direct the advance of large sums of money to certain rail-road corporations, on the execution of a bond, "in such form as the Attorney General shall



prescribe," and on the conveyance of the entire road with its income, and all the franchise and property to the corporations respectively belonging, as a pledge or mortgage to secure the performance of all the conditions of such bond, "by a suitable instrument to be prepared for that purpose, under the direction of the Attorney General."

Without stopping to inquire whether this new and highly responsible trust was a part of the regular official duty of the Attorney General, or might properly be considered as an extraordinary service specially required by the Legislature, I have in all the cases which have been presented, attended to the business without expense to these corporations or any of them, and with the deliberation and care which the amount involved and the circumstances of the conveyance would admit.

But the immense interest which the Commonwealth has in these securities, the imperfect state of the general law necessarily applied, and yet hardly applicable to conveyances of this novel character, where much of the property intended to be conveyed had no actual existence at the time the conveyance was made; the uncertainty which, to some extent and for a period of time, must exist as to the titles of pieces of real estate taken by corporations by force of law, without the owners consent, and yet conveyed by these legal instruments from those corporations to the Commonwealth, with other circumstances, varying indeed in each case, but more or less applicable to them all, induce me very respectfully to express a wish, that the Legislature would be pleased to revise the several instruments which have been prepared for this purpose.

These legal instruments are intended to be securities for millions of dollars. They are put on file in the Treas-

urer's office, and may not, perhaps, be disturbed for half a century. Their value can be tested only when judicial action may be required. In the mean time, laws and lawgivers change. New views may be taken of individual and corporate liabilities and rights. A present acceptance of these securities may, at some future time, be deemed to have been necessary to their validity. At any rate, such a revision would remove all doubts, and correct all errors, if either one or the other should be found to exist.

It is respectfully submitted, that in case any one of these corporations should neglect to pay the annual interest, as provided for in these contracts, the State might be placed in a very disagreeable position, and the Treasurer be unable to maintain the public faith; and that for this possible emergency, no sufficient security is, or could be provided in these legal instruments.

It is further respectfully submitted, that the possession of the personal property intended to be conveyed by them, is to be kept by the corporation until a breach in the condition of the bond, and that there is no security by force of these instruments, and by the express provision of the law none could be made by them, that at the time of the breach of the bond, if any occurs, the personal property will be forthcoming to answer the Commonwealth's demand.

In the hands of the high-minded and honorable men who now control these great properties no danger can be apprehended. But bonds and legal instruments are made for posterity, and are of value only as they are prepared for all possible emergency.

After the passing the Act to aid the construction of the Western Rail-Road, ch. 9, 1838; and when, in prepara-

tion for the duties it enjoined upon me, I necessarily studied its conditions, I informed the President of that Corporation, that in the then condition of their property, and of the general laws of the Commonwealth, I should not be able to approve any instrument that could be drawn; as none would, in my opinion, be adequate to the purposes contemplated by the Legislature.

The law agent of that Corporation, assenting to the difficulties suggested, prepared the 4th and 5th sections which were added to a Bill, then pending, and are now part of the 99th ch. of 1838.

These provisions were not, in every respect, such as would have been desirable, according to my view of the case; but when the conveyances were prepared and presented to me for examination, after the passing of this law in express reference to the subject, and after the Legislature had adjourned, there was no other alternative than by refusing to accept the instruments, to stop for a year the magnificent work in progress, or to accede to construction which the Legislature might be supposed to have given to the whole subject.

It was not without some solicitude that I adopted the later course, being induced to it by the consideration that there would be security enough for the money which was to be advanced within the year, and that the good faith of the Corporation would direct its application in a manner to prevent any considerable hazard, which might have otherwise occurred from the terms of the law, but more especially because the Corporation had in fact tendered *all the security* which the existing law required.

It is understood that the money has been expended in a manner which thus far relieves all anxiety, in this respect.

The provision in the 4th section of the Act aforesaid, makes the conveyance of full force, "without any record thereof," whereby the evidence of the State's interest consists, in each case, of a single piece of paper, exposed to the hazard of fire, or other accident by which it may be lost or destroyed.

The 5th section contains a proviso, which, in case of any embarrassment in the affairs of these corporations, might bring the Commonwealth into litigation with other creditors, and materially affect the security.

In the case of the Norwich and Worcester Rail Road, other difficulties were presented, by reason of the line of Road being, in part, within the jurisdiction of another state, and of the condition of the property, both as to its then and future availability, by reason of this position.

This being known to the Legislature, at the time of the grant of aid for its construction, is adverted to now only to strengthen the wish above expressed, that the present condition of the securities prepared under my direction, may be examined by the Legislature.

In discharge of another branch of the requisition made upon the Attorney General, by the Revised Statutes, I have the honor to submit the following statement:

The sums of money called, in the Treasurer's accounts, "Balances paid by the Commonwealth to the County Treasurers, for the expenses of criminal prosecutions," amounted, for the year 1825, to the sum of \$17,247 61. In 1831, they had more than doubled,—amounting, for that year, to \$38,723 98. With a knowledge of this increase, the Legislature of 1832 revised the system of criminal jurisprudence to a certain extent, and established one in many respects new, which, with the modifications partially made, since that time, has been, and now is, in force.

The operation of this system was, that in the year 1832, the expenditure was reduced to \$28,156 69, and was, in 1831, kept at the sum of \$31,591  $\frac{1}{2}$  15. A careful examination of the results of the two systems, will show, on the same amount of business, a reduction by means of the present one, in the annual expenditure of not less than \$10,000, in the balances of the County Treasurers' accounts, and a further saving to the Commonwealth of about two thousand dollars per annum, by reducing the number of prosecuting officers from sixteen, as formerly, to six, as at present.

It is found, however, that there is in these expenses a constant tendency to increase. The amount for 1838 is nearly or quite \$70,000, being more than four times what it was in 1825, and more than double the amount in 1831. There is little reason to expect that the aggregate of these balances for the current year will not, in like or even greater proportion, exceed that of the last, unless the Legislature shall be pleased to devise and adopt some measures to counteract this progressive accumulation.

These balances are made up principally of two classes of expense. One is *costs*, properly so called, taxed by law in the prosecution of accused parties in the judicial tribunals up to the time of their conviction or discharge. The other is for the *expenses* of maintaining such parties before sentence, in the county jails, or after sentence, in such jails, or in a house of correction. Of the costs above mentioned, it is to be observed, that one portion occurs before Police Courts or examining magistrates, which are not under the control of the prosecuting officers of the government, and that only the residue is caused by proceedings in the courts of record, under their direction.

It is believed, that if these accounts should be analysed, it would be found that the part belonging to the

latter description, has not increased as rapidly as the other part, nor beyond the proportion fairly arising from the increase of crime, the natural results of the system under which crime is prosecuted, and the present elaborate mode of trying causes, which accords with the deliberation, intelligence, and growing humanity of the age.

Nevertheless, the whole subject may, in a certain sense, be deemed to belong to the department of criminal justice, and the alarming tendency to a constant increase of expenditure, which is seen by a comparison of the accounts of former years with those of more recent date, and especially of the last year, justify an inquiry into the subject. The immediate causes of this increased expense, and the means of reducing it by amendments of the existing laws may unquestionably give rise to a difference of opinion, and the different interests which might be affected by a curtailment of existing causes of expense would no doubt increase the difficulty of establishing a more economical system.

My observation in the practical discharge of my official duties, satisfies me that something may be done to arrest the progress of the evil, without diminishing the efficiency of public justice or impairing the protection of individual rights; but I venture in an annual report, to do no more than state the facts, without attempting to enumerate the supposed causes, or their probable remedy.

Abstracts of the reports made by the several District Attornies, are hereunto annexed, and the whole

Respectfully submitted, by

JAMES T. AUSTIN,

*Attorney General.*

*January 3d, 1839.*

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**ABSTRACT OF THE REPORT**

OF

**ASAHEL HUNTINGTON, ESQ.**

*ATTORNEY FOR THE COMMONWEALTH FOR THE*

**NORTHERN DISTRICT.**

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# 34 ATTORNEY GENERAL'S REPORT. [Jan.

CAUSES OF COMPLAINT.	Cases to be disposed of.				How disposed of.				REMARKS.		
	Pending at the date of last Report.	Bills.	Appeals.	No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.		Continued.	
On the License Laws,	39	28	2	11	80	*3	53	1	12	*Judgment arrested by operation of the new license law.	
Larceny,	5	50		13	68	*3	47	1	4		
Nuisance,	19	16		9	44	3	21	1	10		*Acquitted in two cases by reason of Insanity.
Assault and Battery,	5	15	9	10	39	*5	18	1	5		*One case of a complaint to a magistrate—quashed on motion.
Forgery and Counterfeiting,	5	3		2	10		4		*4	*Defendant not arrested in three cases.	
Perjury,	1	2		6	9			1	2		
Subornation of Perjury,		1			1				1		
Conspiracy,	1	2			3	1		1	1		
Adultery,	2	5		1	8	2	4		1		
Fraud,	1	9		3	13		6		*4	*Defendant not arrested in two cases.	
Libel,	1	1		1	3		1		1		
Trespass and Malicious Mischief,	2				2		2				
Lewdness and Lascivious Co-habitation,	3	3		1	7		2	1	*3	*Defendant not arrested in one case.	
On the Gaming Act,	3	3		3	9		5		1		
Rescue,	2				2	1		1			
On the Sunday Law,	3	12	1	4	20		7		9		
Murder,	1	1			2		*1		1	*Convicted of manslaughter.	
Illegal Voting,	1			2	3				1		
Riot,	3	4			7		3	1	*3	*Defendant not arrested in one case.	
Extortion,	1				1			1			



CAUSES OF COMPLAINT.	Cases to be disposed of.					How disposed of.				REMARKS.
	Pending at the date of last Report.	Bills.	Appeals.	No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.	Continued.	
Peddling,	1	2		1	4		3			
Robbery,	1	2			3		3			
Disturbing Public Worship,		2	1		3	*1	2			*Case of a complaint to a magistrate, quashed on motion.
Burglary in 2d Degree,		8			8		8			
Felonious Assault,		5			5	*1	3		1	*Acquitted by reason of Insanity.
Escape from House of Correction,		13			13		11		1	
Rape,		1			1				1	
Accessory to a Felony,		5			5	1	1		3	
Blasphemy,		1			1				1	
Sodomy,		1			1	1				
Procuring Abortion,		1			1	1				
<b>Total,</b>	100	196	13	67	376	23	205	11	70	
Attachments,					5					
Actions of Debt on Recognizance,					10					
<b>Total Cases on this Abstract,</b>					391					
<b>Deduct Cases pending at date of last Report,</b>					100					
<b>Total new Cases since last Report,</b>					291					

*Of the foregoing persons convicted, there were sentenced to confinement to hard labor in the State Prison :*

No. of Individuals.		Term of Sentence.	No. of Sentences.
1	for	6 years.	1
7	"	5 "	7
3	"	4 "	3
7	"	3 "	7
2	"	2 "	3
13	"	1 "	13
1	"	18 months.	1
<hr/> 34	{ individuals sentenced.		{ sentences passed. } <hr/> 35

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**ABSTRACT OF THE REPORT**

OF

**SAMUEL D. PARKER, ESQ.**

**ATTORNEY FOR THE COMMONWEALTH FOR THE**

**COUNTY OF SUFFOLK.**

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# 38 ATTORNEY GENERAL'S REPORT. [Jan.

CAUSES OF COMPLAINT.	Cases to be disposed of.					How disposed of.				REMARKS.
	Pending at the date of last Report.	Bills.	Appeals.	No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.	Continued.	
Adultery,	2	2		1	5		1		3	
Sodomy,		1			1		1			
Lewdness,		3		1	4		2		1	
Houses of Ill Fame,	1	27		2	30	2	21	2	3	
Bigamy,		2			2		1		1	
Violating License Law,		3	2	1	6	2	3			
Ditto Law against Gaming,		3	1	1	5	2	2			
Ditto Lottery Law,		3		2	5		3			
Ditto Wooden Building Law,		1		1	2				1	
Frauds,	5	12		7	24	4	3	3	7	
Forgery and Passing Counterfeit Bills,	2	28		1	31	4	25		1	
Riot,	1	1			2		1		1	
Perjury and Subornation of Perjury,		13		17	30	2	7		4	
Kidnapping,		2			2		2			
Libel,		2		1	3				1	1
Larceny,	2	190		9	201	12	151	1	27	1 abated by death of defendant.
Receiving Stolen Goods,		9		1	10		8		1	
Embezzlement,		4		13	17	1		1	2	
Burglary,		3			3		2	1		
Assault and Battery,	2	47		5	54	4	44		1	
Felonious Assault,		2			2		2			

CAUSES OF COMPLAINT.	Pending at the date of last Report.	Cases to be disposed of.				How disposed of.				REMARKS.
		Bills.	Appeals.	No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.	Continued.	
Official Misdemeanors,		3	10	13		1	2			
Other Misdemeanors,			3	3						
Administering Unlawful Oaths,			2	2						
Escapes from House of Correction,		4	1	5			4			
Escape from Jail,		1		1			1			
State Prison Convicts for Additional Sentence,		12		12			12			
Violating Conditional Pardon,		3		3			2			1 Dismissed by M. C. for want of Jurisdiction.
Attempt to commit Crime,		8		8		5	3			
<b>Total,</b>	15	389	379	486		39	303	9	54	2
<i>Actions in Supreme Court,</i>				*3						
<i>Appeals in Supreme Court,</i>				17						
<i>Actions in Common Pleas,</i>				*47						*On recognizances.
<i>Total Cases on this Abstract,</i>				553						
<i>Deduct pending at date of last Report,</i>				15						
				538						

*Of the foregoing persons convicted, there were passed sentences of confinement in the State Prison, by order of the Municipal Court :*

**Sentences.**

6	for	7 years each.
2	"	6 "
3	"	5 "
1	"	4 "
7	"	3 "
1	"	2 ys. 9 ms. 25 ds.
19	"	2 years.
6	"	1 year.

**And for periods in addition to existing sentences :**

1	for	8 years.
1	"	7 "
9	"	1 "
2	"	6 months.
1	"	2 "

**In regard to some of the individuals appealing to the Supreme Court, these sentences were varied.**

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**ABSTRACT OF THE REPORT**

OF

**CHARLES H. WARREN, ESQ.**

**ATTORNEY FOR THE COMMONWEALTH FOR THE**

**SOUTHERN DISTRICT.**

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# 42 ATTORNEY GENERAL'S REPORT. [Jan-

CAUSES OF COMPLAINT.	Cases to be disposed of.				How disposed of.				REMARKS.
	Pending at date of the last Report.	Bills.	Appeals.	No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.	
Manslaughter,		1	1	2		1			
Burglary,		1	1	2		1			
Forgery,		2	1	3		2			
Perjury,		2	3	5	2				
Arson,			1	1					
Larceny,		27	13	40	1	24	2		
Adultery,		4		4		4			
Lascivious Cohabitation,		1		1		1			
On the License Law,	42	71	1257	182	1	86	1523		
Nuisance,	17	20	15	52		15	616		
Fornication,		4	1	5		4			
Law of the Road,	1			1				1	
Selling Unwholesome Provisions,	1			1			1		
On the Gaming Law,		1		1		1			
Malicious Mischief,		3	2	1	6	3	2		
Open Gross Lewdness,		3		3		3			
Riot,		1		1		1			
Cruelty to Animals,		1		1		1			
Assault and Battery,		8	5	3	16	11	2		
Escape from Prison,			1	1					
Drunkenness.			3	3			1	2	



CAUSES OF COMPLAINT.	Cases to be disposed of.					How disposed of.			REMARKS.
	Pending at the date of last Report.	Bills.	Appeals.	No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi. Continued.	
Embezzling,				1	1				
Extortion,	1				1	1			
Libel,	1	1			2			2	
Profane Cursing and Swearing,	1				1		1		
Breach of Sabbath,	1				1		1		
Peddling,				1	1				
Disturbance of Religious Meeting,		1			1				1
Official Misdemeanor,	1				1			1	
Refusing to aid an Officer,		1			1		1		
On School Law,		1			1			1	
On Laws regulating Fisheries,		2			2				2
Writs of Scire Facias,	66	156	23	100	344	5161	*33	45	
					14				
					358				
Deduct Cases pending at date of last Report,					66				
Total NEW Cases since last Report,					292				

\* This column includes many cases where costs of prosecution were paid by defendants, and all cases in which the proceedings before Justices were quashed, after appeal.

**44 ATTORNEY GENERAL'S REPORT. [Jan.**

*Of the foregoing persons convicted, there were sentenced to confinement to hard labor in the State Prison :*

<b>1</b>	<b>for</b>	<b>5 years.</b>
<b>2</b>	<b>"</b>	<b>4 "</b>
<b>2</b>	<b>"</b>	<b>2 "</b>
<b>3</b>	<b>"</b>	<b>1½ "</b>
<b>7</b>	<b>"</b>	<b>1 "</b>
<hr/>		
<b>15</b>		

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**ABSTRACT OF THE REPORT**

OF

**DANIEL WELLS, ESQ.**

**ATTORNEY FOR THE COMMONWEALTH FOR THE**

**WESTERN DISTRICT.**

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# 46 ATTORNEY GENERAL'S REPORT. [Jan.

CAUSES OF COMPLAINT.	Cases to be disposed of.					How disposed of.				REMARKS.
	Pending at the date of last Report	Bills.	Appeals.	No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.	Continued.	
Assault and Battery,	1	22	1	6	30	20	2	2		
Larceny,	4	20	3	3	30	1	13	4	9	
Receiving Stolen Goods,		1			1			1		
Nuisance,	6	10		14	30	3	3		10	
License Law,	4	16	3	1	24	9	*4	10		*3 paying costs.
Perjury,	2				2	2				Reversed in S. J. C.
Adultery,		4			4	1	1		2	
Felonious Assault,		4			4		1		3	
Cruelty to Animals,		1			1		1			
Breaking Jail,		2			2		1		1	
Lord's Day Act,		1			1				1	
Illegal Voting,		1		2	3		1			
Malicious Mischief,		1		2	3			1		
Official Misdemeanors,		3	1		4		1		3	1 Trial—Jury did not agree.
Peddling,		2			2		2			
Embezzlement,		1			1	1				
Extortion,				1	1					
Riot,		2			2		2			
Drunkenness,		2			2		2			
Forgery,		2			2				2	1 Defendant broke jail.
Lascivious Cohabitation,		1			1		1			

CAUSES OF COMPLAINT.	Cases to be disposed of.				How disposed of.				REMARKS.
	Pending at the date of last Report.	Bills.	Appeals.	No bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.	
Rape,		1			1				Capital case : carried to S. C.—Not yet tried there.
Trespass,		1			1		1		
Laid on File,	17	98	8	29	152	6	61	12	43
On last Report,	18								
Old Cases,	35				17				
New Cases,					135				

*Of the foregoing persons convicted, there were sent to the  
State Prison :*

1	for	6 years.
1	"	5 "
3	"	3 "
1	"	2 "
4	"	1 "

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**ABSTRACT OF THE REPORT**

OF

**PLINY MERRICK, ESQ.**

**ATTORNEY FOR THE COMMONWEALTH FOR THE**

**MIDDLE DISTRICT.**

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CAUSES OF COMPLAINT.	Cases to be disposed of.				How disposed of.				REMARKS.
	Pending at the date of last Report.	Bills.	Appeals.	No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.	
Murder,				1	1				
Manslaughter,				1	1				
Nuisance,	15	9		16	40		13		11
Bigamy,				1	1				
Violation of Lord's Day,				2	2				
Disturbing Public Worship,				2	2				
Riot,				1	1				
Selling Unproved Fire Arms,	1				1			1	
Larceny,	2	38	1	12	53	1	32	1	7
Forgery and Counterfeiting,	3	9		1	13	1	6	2	3
Malicious Mischief,	1	3		1	5	1	1	1	1
Lewdness and Lascivious Co-habitation,	1	1		2	4		1		1
Violation of License Law,	6	45	11	28	90	4	45	2	11
Assault and Battery,	5	7		4	16	1	7		4
Perjury,	1	2		3	6			2	1
Blasphemy,	1				1			1	
Common Drunkenness,	1		3		4		2	1	1
Adultery and Fornication,		4		3	7		3		1
Escape,		3		1	4		3		
Arson, 2d degree,		1			1		1		
Robbery, 2d degree,		1			1		1		



CAUSES OF COMPLAINT.	Cases to be disposed of.				How disposed of				REMARKS.
	Pending at the date of last Report.	Bills.	Appeals. No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi. Continued.		
Burglary,		1		1		1			
Cheating,	1	8	8	17	1	3	1	4	
Official Misdemeanor,		1	5	6		1			
Embezzlement,		3	1	4				3	
Illegal Voting,		1		1				1	
Concealing Death of Bastard Child,		1		1		1			
Conspiracy,		1		1				1	
Extortion,		1		1		1			
Writs of Scire Facias,	38	140	1593	286	9	122	12	50	
Total Cases on this Abstract,				25				11	Cases where- in defendants have abscond- ed, and will probably not be arrested.
Deduct Cases pending at last Report,				311				39	
Total NEW Cases since last Report,				38					
				273					

## 52 ATTORNEY GENERAL'S REPORT. [Jan. 1859.]

*Of the foregoing persons convicted, there were sentenced  
to hard labor in the State Prison :*

2	for	Life.
2	"	7 years.
1	"	5 "
2	"	4 "
5	"	3 "
4	"	2 "
2	"	1½ "
6	"	1 "

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24 persons sentenced to }  
the State Prison. }

**SENATE.....**

**.....No. 4.**

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**A B S T R A C T**

**OF THE**

**SAVINGS BANK RETURNS.**

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# **Commonwealth of Massachusetts.**

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**SECRETARY'S OFFICE, Jan. 7, 1839.**

***To the Honorable Senate, and  
Honorable House of Representatives:***

**In obedience to the provisions of the thirty-sixth chapter of the Revised Statutes, I have the honor to submit herewith an Abstract of the Returns made by the several Institutions for Savings in this Commonwealth, on a requisition of His Excellency the Governor, showing their condition on the last Saturday of October, 1838.**

**Very respectfully,**

**Your obedient servant,**

**JOHN P. BIGELOW,**

***Sec'ry of the Commonwealth.***

*Abstract of the Returns of the several Institutions for Savings in this Commonwealth, on the last Saturday of October, 1838—Two o'clock, P. M.*

SAVINGS INSTITUTIONS.

[Jan.

Names of the several Institutions.	No. of Depositors.	Total amount of Deposits.	Amount invested in Bank Stock.	Amount deposited in Banks on Interest.	Amount secured by Bank Stock.	Amount invested in Public Funds.	Loans on account of the Public Funds.	Loans on Mortgages of Real Estate.	Loans to county or town.	Loans on personal securities.	Amount of Cash on hand.	Total Dividends for the year.	Annual Expenses of the Institution.
Andover, . . .	136	16,170 62	3,000 00	1,904 75	.	.	.	4,000 00	.	7,265 37	.	677 47	25 00
Barnstable, . . .	213	29,694 65	12,100	.	1,000 00	.	.	.	1,600	15,063	531 00	1,597 65	76 69
Boston, . . .	12,960	1,966,307 91	604,211 80	375,800	367,330	55,000 00	.	262,115 50	243,597 69	.	67,357 30	71,948 40	8,176 49
" for Seamen, .	1,043	160,496 57	25,025	65,000	35,917 88	.	10,000 00	19,800	15,000	.	6,661 02	5,002 72	1,638 72
" at South Boston,	No	Return.	.	.	.	.	.	.	.	.	.	.	.
Cambridge, . . .	176	14,997 86	3,156	.	.	.	.	10,200	1,850	.	340 30	493 09	75
Canton, . . .	150	14,830 49	7,762 50	.	.	.	.	6,342 15	.	2,195	5 78	277 18	75
City, in Lowell, . .	No	Return.	.	.	.	.	.	.	.	.	.	.	.
Concord, (Middlesex,)	273	32,519 52	12,176 01	1,000	1,300	.	.	17,250	500	2,000	813 26	939 44	129 25
Dedham, . . .	707	95,385 87	18,477 50	.	900	.	.	59,669	2,200	14,948	1,502 24	3,439 99	325
Fairhaven, . . .	133	20,303 65	15,100	.	1,000	.	.	200	.	3,700	1,909 73	1,103 56	150
Fall River, . . .	715	122,182 17	44,500	.	8,152 25	.	.	21,327	1,500	49,586 27	1,968 01	6,676 24	388 58
Franklin, in Greenfield,	80	7,378 20	.	451 32	.	.	.	4,300	1,300	1,450	.	292 48	33 50
Gloucester and vicinity,	361	29,809 33	11,000	.	500	.	.	9,700	4,500	874	.	1,201 32	95
Haverhill and vicinity,	461	43,722 08	19,179 11	.	2,640	.	.	18,327 74	.	4,318	768 05	2,102 22	102 57
Hingham, . . .	547	82,613 53	17,990 76	.	2,000	.	.	51,951	.	11,728	131 25	3,527 04	300



## NOTES.

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**BOSTON.**—In the column of “loans on mortgages of real estate” are included an investment in the Massachusetts Hospital Life Insurance Company of \$21,000; and the real estate of the Institution valued at \$22,815 50.

**FALL RIVER.**—In the column of “amount secured by bank stock” is \$8,152 25, secured by pledge of manufacturing stock.

**HAVERHILL.**—In the column of “loans on mortgages of real estate” is \$1,500 real estate, owned by the Institution; and in the column of “loans on personal security” is \$2,275, loaned to parishes and religious societies.

**LYNN.**—In the column of “amount secured by bank stock” is \$800, secured by insurance stock; and under the column of “loans to county or town” the amount is loaned to religious societies, with personal security.

**SALEM.**—In the column of “dividend for the year” is included an extra dividend of \$28,938 06, for the last five years.



**WORCESTER.**—In the column of “dividend for the year” is included an extra dividend of \$25,348 08, for the last five years.

**CHELSEA.**—The treasurer and directors state their intention of commencing business in January, 1839.



**SENATE.....**

**.....No. 5.**

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**R E P O R T**

**OF THE**

**BANK COMMISSIONERS.**

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To His Excellency, EDWARD EVERETT,

*Governor of the Commonwealth of Massachusetts :*

The Bank Commissioners, in compliance with the provisions of the Act, under which they were appointed, have the honor to submit the following, as their first annual

## R E P O R T :

The second section of the "Act providing for the appointment of Bank Commissioners," provides that "said Commissioners or some one of them, at least once in every twelve months, and as much oftener as they may deem expedient, shall visit every Bank and Provident Institution for Savings, incorporated by authority of this Commonwealth, and shall thoroughly inspect and examine all the affairs of said corporations, and make all such inquiries as may be necessary to ascertain their condition and ability to fulfil all their engagements, and whether *they have complied with the provisions of law, applicable to their transactions ;*" and the sixth section of the same Act, makes it their duty, "in the month of December annually, to make a report to the Governor, of the *general conduct and condition of the corporations visited by them, and in case any one or more of said corporations*

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have, in the opinion of the Commissioners, *essentially* violated any law of this Commonwealth, they shall make a special report on the subject of such violation, with such statements and remarks as they may deem expedient."

The Commissioners entered upon the discharge of the duties assigned to them, as soon as practicable after their appointment, and have continued their examinations, with such diligence as their private avocations would allow, and the public interest seemed to require, to the present time. They have visited and examined one hundred and twelve Banks, and twenty-five Institutions for Savings, and they take great pleasure in stating, that wherever they have been, though their visits have, generally, been made without any previous notice, and have, sometimes, doubtless, happened at times not the most convenient for the directors and other officers of the corporations, they have, uniformly, been received, not only with courtesy but with apparent, and they doubt not, real, cordiality. The Commissioners were aware, that unexpected visits might subject the officers of Banks to some inconvenience, and themselves to some additional labor and delay, yet the advantages of seeing every day operations carried on in their every day dress, were so manifest, that they could not hesitate as to the proper course for them to take.

As the Banks, in the city of Boston, had been under the eye of the Legislature for some months, and several of them had been subjected to rigid examinations by committees specially appointed for the purpose, and as the Banks themselves were associated for mutual examination and support, during the suspension of specie payments, the Commissioners concluded to commence their

labors with those in the country, which, if they had suffered less than others in the common calamity, which had come upon them all, had, hitherto, attracted but little notice. The Banks having the smaller capitals have for the most part, been examined by one only of the Commissioners, while those with the larger capitals have, generally, been visited by two or more of them together. Their course has been, — to require of the officer having charge of the books, a statement of the condition of the Bank, on the day of the visit, and then to test the truth of the statement by counting the cash in the Bank, examining, one by one, and taking an account of the notes discounted, and comparing the balances on the books with the statement, and verifying the correctness of all by the oath of the proper officers. They have, sometimes, gone further, when it could be conveniently done, and have required statements of balances due from and to other Banks to be substantiated by certificates from the cashiers of the Banks, with which there were said to be such open accounts. It is obvious, that this could not be done, generally, without a good deal of delay and much inconvenience. They have, also, looked with considerable care, into the evidence in relation to the issue and destruction of bank-bills, in order to ascertain the exact amount of the circulation. But their attention has been, *more* particularly than to any thing else, directed to the *loan*, — believing that, if the funds of the Bank are loaned out on good and proper security, although the officers, having charge of the cash, may be guilty of embezzlement and may, for a while, successfully cover up the fraud, yet the public is secure against loss. While the loan continues sound and substantial, a Bank cannot become insolvent. In a word, they have endeavored to

obtain the best evidence, of which the nature of the case would admit — not trusting to the representations of interested persons, when better evidence could, conveniently be obtained, or reasonably required. They have been thus particular in stating their mode of examination, because they supposed such to be the *thorough* examination, contemplated by the Statute.

And it gives them great satisfaction, that they are able to report, that as far as their examinations have extended, the Banks of this Commonwealth are, *generally*, not only in a sound condition, but have been managed conformably to the laws made for their government. Indeed, they would feel, that they were doing injustice to a very large proportion of those corporations, were they to withhold the expression of the opinion, that they have been conducted with great skill and good judgment, under circumstances of peculiar temptation and embarrassment. The association of the Boston Banks for mutual examination and support has been already alluded to. The temptation was certainly strong, at the time of the suspension of specie payments, for the strong Banks to adopt the unsocial principle, that it belonged to each one to take care of itself. Such a course, to be sure, might, and probably would, have been suicidal in the end, for the whole business-community must have been prostrated ; but it is nevertheless true, that many reasons might have been urged for adopting it. It can hardly be doubted, that, to that association the public is indebted for a saving of some hundred thousands of dollars of irredeemable Bank bills. The temptation, too, was strong for the country Banks, on the happening of the same event, to withdraw their deposits for the redemption of their bills in Boston, and to take advantage of a great calamity to



enrich themselves by an increase of their circulation. They all, however, without exception, continued to redeem their bills in Boston during the suspension, as they had done before.

It is unnecessary for the Commissioners to discuss the question of the necessity or expediency of the suspension of specie payments by the Banks of this Commonwealth; for public sentiment, as well as the voice of the Legislature, has settled it. To show, however, the strength of public sentiment, as well as the confidence which was, generally, felt in the integrity and solvency of the Banks, they would state the fact,—that during the whole time of the suspension, suits for refusing to pay specie were instituted against thirteen only of all the Banks, which have been visited, and those suits were all for very trifling amounts.

Neither is it necessary, that the Commissioners should state the fact, that all the Banks in the State have resumed specie payments. The fact is sufficiently attested by the evidences of returning prosperity, which greet us on every side. They commenced paying specie for their small bills, immediately, on the passage of “an act to aid the Banks in resuming specie payments,” passed April 25, 1838. Some of them, very soon after, resumed the payment of specie, when requested, for *all* their liabilities, and the resumption became general on the 13th of August last. By a comparison of the last three returns of the Banks, which have been published, it appears, that the circulation, on the first Saturday of October last, was about \$500,000 less than it was on the first Saturday of October, 1837, and about \$300,000 more than it was on the second Saturday of February, 1838. It also appears, that the aggregate amount of specie was about \$900,000 more

than it was in October, 1837, and about \$700,000 more than it was in February last. So that, notwithstanding the resumption of specie payments in the meantime, the circulation, between February and October last, had increased \$300,000, and the specie had also increased \$700,000. The amount of specie, holden by the Banks, on the first Saturday of October last, was not only absolutely larger, but larger in proportion to circulation than it had been at any former period for ten years. A table is annexed, showing the liabilities of the Banks to the public, and also their resources, as taken from their published returns for the last ten years, from which it appears, that their immediately available resources, on the first Saturday of October last, were larger in proportion to their liabilities, than they had been at any former period during said term of ten years.

The Commissioners have received, from the Banks, returns of their condition on the first Saturday of June last, and had intended, that an abstract should accompany this report; but on comparing them with the returns of February and October, they do not perceive, that they furnish any material additional information, and they have concluded, therefore, to withhold them. They will be happy, however, to make such disposition of them as your Excellency or the Legislature may direct.

It is made the duty of the Commissioners, by the sections of the act before cited, not only to ascertain and report upon the ability of the corporations visited by them to fulfil all their engagements, but also, to ascertain whether they have complied with the provisions of law applicable to their transactions, and to report any *essential* violations. They have already remarked that the Banks *generally* have been managed conformably to the rules established

for their government ; but they have discovered violations of the laws in the transactions of some of them, which they are constrained to report as essential violations.

There have prevailed, and still prevail, very erroneous notions with regard to the meaning of the law relating to the paying in of the capital stock. Every act incorporating a Bank is upon the express condition, that the whole capital stock shall be paid in within a certain time specified in the act, and the general law relating to Banks provides, that no loan shall be made to any stockholder, until the full amount of his shares shall have been paid in. It would seem as if these were very intelligible provisions of law ; and that it would require an effort to misunderstand them. And yet it has been gravely argued, that the giving of a note of hand, or a memorandum check, *promising* to pay, secured by a pledge of the shares, which have never been paid except by that identical note or check, is a substantial compliance with the law. And when the meaning of the law has certainly not been misunderstood there have occasionally been practices which were after all but poor attempts to evade it ; as where there have sometimes been express promises, and in other cases, implied agreements or understandings, that the money which was paid in on one day should be loaned back again to the stockholders on the next, or as soon as the mere *form* of the law had been complied with. The Commissioners have felt themselves the more strongly bound to notice these violations and attempted evasions of a plain law ; because to them it is believed may be traced more or less remotely most of the bank failures which have occurred in this Commonwealth. The paying of the capital stock is not *form*, but *substance* ; the law intends that the bu-

siness of these corporations should be built up upon an actual cash capital, and not upon the foundation of uncertain promises.

By the Legislature of 1836, were passed thirty-three acts incorporating new Banks, and twenty-three acts increasing the capitals of Banks then in operation. In some cases it was found, when the time for paying in the stock had arrived, that a portion of the subscribers were unable to perform their engagements. The stock thus thrown upon the Banks, was, in some instances, assumed by the individual directors, who gave their notes for the amount of such deficiency, and, in other instances, it remained as the property of the Bank, to be disposed of as soon as an opportunity should offer. Occasional sales have been made ; but, in some ten or twelve of the Banks, which have been visited, there still remains a portion of the stock,—in most cases, a small amount,—which has never, in fact, been taken up or paid in. The Commissioners deem it unnecessary, at this time, to report the names of the Banks, thus situated, as they have the assurance, that the stock will be disposed of, at the earliest opportunity, and as they believe, the public will sustain no damage thereby.

There are other cases of gross violations of the law in this behalf for which no excuse or apology can be found. Some of them came under the supervision of the Legislature, at its last session, and others will be specially noticed in another part of this report.

In a few instances, the Commissioners have found the debts due to Banks to have been more than double the amount of their capitals ; but such cases have been very rare and of short continuance, and apparently accidental.

They have taken pains to ascertain from all the

Banks, which have been visited, the rates of exchange which have been charged on the discount of inland bills of exchange and drafts, as well for the purpose of seeing whether there were any which could be called *fixed* rates, as to discover whether in any cases, usurious interest had been attempted to be covered up under the name of exchange. The charges were found to be very various;—differing in different places, and at different Banks in the same place, and at the same Bank, at different times. This was to have been expected, and is to be attributed mainly, no doubt, to the unsettled state of affairs for the last two years, to which term their inquiries were limited. The charges, though generally liberal, do not, under the circumstances of the times, appear to have been extravagantly high. Many of the country Banks, they found, were in the habit of charging a fourth or a half of one per cent. for exchange on bills and notes discounted by them, payable in Boston. The propriety of this charge may well be questioned. It is not easy to see how exchange can be in favor of the country, when all the country Banks want funds in Boston. The practice, however, was defended on the ground, that, as those Banks redeem their bills in Boston, thus making the bills of all the Banks in the Commonwealth of uniform value, and as they are obliged to compensate some Bank or other agent for collecting their debts and redeeming their bills there, it was but right and reasonable that they should charge a small sum to remunerate themselves, in part, for such expense. Besides, it was said, inasmuch as this subject had been before the Legislature, and the practice had not been forbidden by law, it was to be presumed, that it was not considered objectionable. The Commissioner who visited the Randolph Bank found

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there a practice which was entirely new to him, but about which he had no hesitation in giving a legal opinion, on the spot. It appeared, that when notes were brought to that Bank for discount, which were payable there, but which the Cashier thought had better be payable in Boston, he imagined them to be, in fact, payable at the latter place, the name of which he would write on one corner in pencil mark, and then charge the half of one per cent. on the amount, as for collecting a draft or note really payable in Boston. But it did not appear that the legal operation of the written contracts was so far altered by that process, as that they really thereby became payable, or were, in fact, paid elsewhere, than at the counter of the Randolph Bank. He found also, at the same Bank, another ingenious contrivance. When a note was offered for discount, having the offensive name of Randolph standing at the top, it was not an unusual thing to cause it to be stricken out, and the name of some more agreeable town or city in the neighborhood to be inserted in its stead, and then to charge a quarter or half of one per cent. by way of exchange, though it was well understood that the note was to be paid at the Randolph Bank. The Commissioners are satisfied, that this practice has been entirely discontinued, and they take pleasure in adding, that the Bank has been in other respects, well and properly managed. It is, as they are satisfied, in a perfectly safe condition, and a useful institution in the neighborhood where it is located.

“An act concerning Banks and Banking,” was passed on the 25th April 1838, granting certain supposed privileges, and among others, that of charging on the discount of *notes* payable at any other places than where the Banks respectively are located, in addition to interest,

the then existing rate of exchange, in like manner, as upon the discount of bills of exchange and drafts. It then goes on to limit the amount for which the Directors and other officers may be liable, *unless* the stockholders shall, by an express vote, authorize a larger amount:—forbids any Bank to hold its own stock beyond a certain time:—provides that no Cashier shall be a Director, and that records shall be kept of the names of all Directors present, and of their doings, at all meetings of the Directors. The last section directs the Secretary of State to transmit a copy of the act to each Bank in the State, and provides that “*no Bank incorporated prior to May 1st. 1836, shall be entitled to the privileges of this Act, unless the stockholders shall, at a legal meeting, accept the said Act.*”

There are no Banks in the Commonwealth which have been incorporated since April 30th, 1836: and, of course, there are none, which, by the terms of the act, are entitled to its privileges, without a formal vote of acceptance.

The act has been duly accepted by the stockholders of twenty-three Banks, of which a list is annexed. Of the remaining ninety-seven, some have voted not to accept it,—some have postponed the further consideration of it to a future day, and others have never considered the subject.

All the Banks which were accustomed to discount paper, payable abroad, *before* the passage of said act, were *in the habit* of charging, for exchange, upon the discount of notes, as well as bills of exchange and drafts; and all such, as well those which have not, as those which have, *accepted said act*, still continue to charge, on the discount of notes, as they did before. The liabilities of the

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directors in most of the Banks, which have not accepted the Act, are above the limits established by the law. Some of such Banks hold their own stock ; in others the cashiers are directors, and in others, the records of directors' meetings have not been kept in the manner prescribed by the statute. Of the ninety-seven Banks, which have not accepted the Act, there is no one, which has not, in some one respect, at least, violated the law.

The North Bank in Boston is the only one, as far as the Commissioners are informed, which has become the owner of its own stock, *by purchase*, since the first day of July last. That Bank has been, for many years, in the habit of buying up its stock, when exposed at auction, and of selling it out again, as it had opportunity, at an advanced price. This practice, as the Commissioners think, has been, not only a departure from the legitimate objects, for which the institution was incorporated, but, without regard to the said Act of April last, a violation of the spirit, if not the letter, of the general law in relation to Banks, by which, beyond a doubt, all Banks are bound. It would seem to be an idle ceremony to require the full amount of stock to be paid in, within a given period, if, on the next day, it might, rightfully, be purchased back again from the stockholders, and yet the institution go on, as a legal banking corporation, without stockholders and without stock.

A few of the Banks have replied to the general interrogatory proposed to them in relation to charging exchange, — that they do not charge, *for exchange*, on the discount of notes, payable abroad ; but are accustomed to charge, in addition to interest, the *actual cost* of collection. This appears to the Commissioners, to be a distinction, without any substantial difference. In the one



case, the cost of collection, which may be less or may be more than the actual cost, is agreed upon and settled by the parties, at the time of the discount; in the other, it is determined, after the note has arrived at maturity.

The Commissioners have, thus, reported the facts, as far as they have learned them, in relation to the Act of April 25, 1838. How far that law is binding upon those Banks, which have not accepted it, they suppose it does not fall within their province to decide.

It is proper, however, that they should remark, that there have been some misapprehensions in regard to the character of that law. Some have supposed, from a hasty perusal, that the Act itself provided, *in terms*, that no Bank should be subject to the law, unless its provisions were first, formally accepted by the stockholders. The law itself makes *no condition*, except as to its *privileges*. Others, again, have argued, that they were entitled to the *privileges*, without being subject to the restrictions of the Act, under the 69th section of the 36th chapter of the Revised Statutes,—which provides, that “if any new or greater privileges shall be granted to any Bank, thereafter created, all Banks in operation at the time of such grant, shall be entitled to the same privileges.” No Bank *has* yet been created with new and greater privileges, and, besides, the Act is one and entire, and must, doubtless, be all taken or rejected together.

Again, it has been argued, that the charter of a Bank is a contract, and that the terms of it cannot be varied by one party, without the consent of the other. This *legal doctrine* the Commissioners are not disposed to *controvert*. But, still, the Legislature *must* have the *right*, and could not divest itself of the power, if it *would*, to *pass* all such laws in relation to these cor-

porations, as are *necessary and proper* to guard the public against loss from the fraud and mismanagement of those, who may have the direction. As matter of *fact*, then, does this law violate any contract? Does it deprive the *corporations* of any essential right or privilege? The Directors are forbidden to extend their liabilities to the Bank beyond a certain limit, without authority therefor from the stockholders; but the stockholders (or the *corporation*) do not appear to be forbidden or restrained from loaning their money to whomsoever, and in such sums as they please.

The Directors of Banks are authorized to declare semi-annual dividends of the *profits* of their Banks. In their anxiety to meet the expectations of the stockholders, and sometimes, perhaps, from a desire to establish a good reputation for the institution, over which they are placed, they have made dividends, not of profits, but of capital. The practice is inexcusable; for it is not only a violation of law, but may operate as a fraud, upon purchasers of the stock.

The law requires that every Cashier of a Bank shall give bonds for a sum not less than \$20,000, before he enters upon the duties of the office. The Commissioners have found a good deal of looseness in this matter. The Bond has, sometimes, been found in the possession of the Cashier himself, and, often, in the keeping of the President or some other Director, who was one of the sureties, and, in some instances, when produced, it has been found to have expired, by its own limitation.

Besides satisfying themselves as to the present solvency of the Banks, and their compliance with the provisions of law, the Commissioners have felt it to be their duty to go further, and ascertain the mode, in which they

were accustomed to conduct their affairs : for the public, as well as the stockholders, is interested in their being conducted with order, and according to established rules.

The meetings of stockholders have been found, on inquiry, to have been very thinly attended. Some Banks furnish exceptions to the general remark ; but they generally are those, which have been in operation but a few years, where the interest, which attaches to a new object, has not yet subsided. It is to be regretted that the stockholders cannot be persuaded to meet once a year, and inquire how their affairs are managed and their interests cared for. Their own interests, as well as the security of the public, would be thereby advanced. The withholding of a dividend, or some temporary excitement will, occasionally, collect together a considerable number ; but, not unfrequently, as the Commissioners were assured, the Directors are obliged to go out into the streets, and compel such luckless stockholders, as they may chance to meet, to come in and vote for them, or be subjected to the necessity of voting for themselves.

The meetings of directors, at most of the Banks, are regularly holden at the times, prescribed by the by-laws, and are, generally, well attended, and, for the most part, records have been kept of the doings, and of the names of the directors present, at each meeting. At some Banks, no loans are made except at the board of directors, and on the regular discount-days, and, if it so happen at any time that a majority is not present at the meeting, the approval of those who were absent, is obtained as they come into the Bank, so that every discount must have the sanction of a majority of the whole board. At others, the president, or cashier, or sometimes a committee of the direct-

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ors, is specially authorized to allow discounts in the intervals between the meetings of the board ; but the discounts, thus allowed, are laid before the directors at their next meeting, for approval, so that no discounts are ever made without being, specially, brought to the notice of the board, at a regular meeting. There are some Banks, whose directors, the Commissioners are sorry to say, hold no stated meetings. The whole business of discounting is entrusted to some one or two individuals, the president or cashier, or, perhaps, both, and the rest of the directors have little more knowledge of the transactions of the Bank, than an entire stranger. The law requires, that no bank shall have less than five directors. But where is the necessity of having five, if four of them may be merely nominal directors ? It is the intention of the law, doubtless, that all shall feel some responsibility, and take some interest, in the management of the institution, committed to their charge. No man ought to accept the office of director of a Bank, and permit his name to go out to the public, as one of its guardians, who is not prepared and willing to devote to it a reasonable share of his time and attention.

A Bank, whose capital stock has been fairly paid in, can never fail to redeem all its liabilities to the public, without gross negligence or fraud on the part of its directors ; and no director should be permitted to excuse himself for the mismanagement of his Bank, on the ground, that he was ignorant of its transactions.

Another fault, of a character kindred to that last named, has been found to exist at some of the Banks, which have been visited ; that is—neglect on the part of the directors to take accounts of stock, or to examine into the exact state and condition of their Banks. Indeed, it

has generally been found, that where directors have ceased to hold stated meetings for discount, they have also neglected to make periodical examinations. Years, in some few instances, have been allowed to pass, without the directors counting the cash or examining the notes discounted. This is the more inexcusable, inasmuch as twice a year, they are accustomed to declare dividends of profits, which they do not know, *from the best evidence*, to have been earned, and once, every year, they are required to certify, under oath, their belief in certain facts, which cannot be learned from the books of the Bank.

By a law of 1837, Banks were forbidden to loan their bills, upon the condition, that they should not be put in circulation or that they should not be returned for redemption, within a limited time. The Commissioners have not learned, that this law has been violated. They have visited one Bank, which continues a practice,—which was, a few years since, not very uncommon—that of loaning its bills at a low rate of interest, not upon condition that they should be kept out of circulation, but that they should be kept *in* circulation, or, in other words, that as often as they came home, they should be redeemed by the borrower with other current money, and again put in circulation. Whether this is, in reality, the same evil which was intended to be remedied by the law of 1837, the Legislature will judge.

The fifty-seventh section of the thirty-sixth chapter of the Revised Statutes provides, that “no bank shall make or issue any note, bill, check, draft, acceptance, certificate, or *cont act* in any form whatever, for the payment of money, at any future day certain, or with interest, excepting for money that may be borrowed of the Commonwealth, or of any institution for savings incorporated under

the authority of the Commonwealth, and excepting, also, that all debts due to any Bank from any other Bank, including the bills of the Bank so indebted, may lawfully draw interest."

The meaning of this law is somewhat obscured, perhaps, by the attempt to make it very definite. At all events, it has received a construction, which gives it a different meaning, from what the Commissioners suppose, was the meaning intended by its framers. They understand the true construction to be this,—no Bank shall make any contract, in any form whatever, for the payment of money, at any future day certain, and no bank shall make any contract, &c., for the payment of money, with interest, except, &c. The whole object of the law was to forbid the borrowing of money, except of the Commonwealth and savings institutions. Banks shall not borrow money on time; nor shall they receive deposits, upon a contract or agreement to allow interest, because such an agreement to pay interest would make the deposits, for all practical purposes, payable on time, provided that Banks may receive interest on the balances due them from other banks. Many of the Banks have deposits, on which interest is allowed, the depositors having the right to draw their money, when they please, losing the interest, if they draw it out, contrary to the understanding between the parties. The Banks understand the law only to forbid the making of contracts to pay money, at a future day certain, with interest. One evil, if no others, may result from the practice. It may induce depositors to withdraw their funds from Banks, in which they have entire confidence, and place them in others in which they have little confidence, for the sake of the interest. Thus weak institution may receive temporary support, at the

expense of those in better standing, and to the loss, it may be, in the end, of the depositors themselves.

The Commissioners have made inquiries, at all the Banks, which have been visited, as to the practice of loaning upon memorandum checks, and, also, as to the allowance of over-drafts.

Checks were found, for small sums, in many of the Banks, and in some few of them, to pretty large amounts. When the amount was considerable, it was, commonly, found to be secured, by notes or stocks, lodged as collateral. This kind of accommodation-loan is, clearly, becoming, as it deserves to be, unpopular. It is objectionable, because made for the mere accommodation of the borrower, and as matter of personal favor, without receiving the sanction of an ordinary loan, and is, as experience has shown, peculiarly liable to be abused.

Some banks are in the habit of making loans to a considerable extent, payable on demand, with the *strongest* collateral security, for the purpose of being prepared, at a moment's notice, to meet any contingency. These are loans for the accommodation of the *Bank*, and are not to be associated with the memorandum checks, before referred to.

Over-drafts were found to be allowed in but few of the Banks. In some few, however, they were found to exist to an extent, wholly unjustifiable. They will, sometimes, occur by accident; but will never be permitted, as a general rule, in any well ordered Bank.

In consequence of having, recently, visited so many of the Banks in the Commonwealth, and become, as they trust, pretty well acquainted with their condition, the Commissioners have been led to direct their attention to the annual Returns, which are made by the Banks,

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for the purpose of determining how far they may be relied on, as indicating the true condition of their affairs.

The remarks which have already been made in relation to the payment of the Capital stock, show, that the first item in the return, viz: "Capital Stock *paid in*," is not always made to conform to the fact. Of course, there must be a corresponding error upon the other side; and the amount which the Capital is deficient, is carried into and increases the amount of debts due to the Bank.

The amount of circulation is differently estimated at different Banks. All the Banks redeem their bills in Boston. Some send for their bills, thus redeemed, every day; others, once a week, and others again, when convenient, so that some Banks will have none—some but few, and others very large amounts of redeemed bills, lying in Boston. But, in making out their returns, some Banks return as in circulation, all their bills, which are out of the Bank, though a large part, perhaps, may have been redeemed and may be then lying in Boston; others wait to hear how many of their bills have been redeemed, and then return, only, the *actual* circulation. This difference is not of great practical consequence, inasmuch as the item of "balances due from other Banks," on the other side of the account, will be too large by just the amount of bills, lying redeemed in Boston. In one view, it may be deceitful. A Bank may appear to have a generous circulation, with a large balance in other Banks to redeem it, when, in truth, it may be struggling on, with its account overdrawn in Boston, though its actual circulation may be very small.

It will be seen, on looking at the returns, that some Banks have no "net profits on hand." The balance of



*the expense-account, after deducting the profits, must therefore, be carried into some item on the credit side, where it should not be. To meet such cases, perhaps, it would be better to return the whole amount of profits on one side, and the amount of the expense-account, on the other, in a separate column. Some Banks deduct the over-drafts from the amount of deposits, and return only the balance as due to depositors. The over-drafts should be added to the amount of debts due to the Banks. It would be well, perhaps, to have a column for over-drafts.*

The "balances due from other Banks" are larger, by the returns, than the actual balances, for the reasons which appear in the remarks, in relation to the circulation.

With regard to the "debts due" to the Banks, the returns furnish no very certain information, except as to the total amount. Whether the debts are few or many; whether the moneys of the Bank are held, in large masses, by a few favored customers, or are dispensed, without favor or affection, among all who furnish good and suitable security;—whether the loan consist of living business-paper, whose payment may be relied on, at maturity, or whether it is bound up in accommodation-notes, on which no reliance can be placed in case of an emergency;—whether the collateral securities are of such *fixed and permanent value*, that a sale can, at any time, be effected and the money realized, or whether they are made up of fancy stocks, whose value depends on the continued credulity of the public;—whether the Directors sit down to the full table themselves, and bestow the crumbs, only, on the starving multitude;—all these are facts, which can be learned only from an examination. The meaning of "reserved profits," is differently under-

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stood by different Banks. Some return the balance of the profits-account, after deducting dividend and expenses ;—some, again, reduce the above named balance by deducting therefrom the amount of interest received but not earned—while two or three others, as is apparent from the returns, give the *gross* amount of profits *before* dividend and expenses are deducted.

There is a great diversity in practice, in relation to the return of doubtful debts. Some return as doubtful, only those, which are nearly, if not quite, desperate ;—others return all as doubtful, about which there is the least question ; and others, still, go into a calculation, and make an estimate of what may, in their judgment, be considered as probably collectable on each debt, and return the balance as doubtful. There must, necessarily, be considerable uncertainty in relation to this item, for different persons will form very different conclusions as to the value of the same paper, with the same evidence before them. The true rule, undoubtedly, is to put down, as doubtful, all over-due paper, about the collection of which, judicious men would entertain reasonable doubts.

The American Bank in Boston was examined by a special committee of the Legislature of 1838, who reported the liabilities of the Bank to the public, on the 31st March, 1838, to be as follows, viz :

Circulation,	\$158,597 00
Deposites and Post Notes,	165,287 38
Unclaimed Dividends,	1,815 00
Balances due other Banks,	23,289 71

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Making the whole amount of Liabilities, \$348,989 09

The Bank was visited by the Commissioners, October 9th, 1838, when its liabilities to the public were found to be as follows, viz :

Circulation,	\$8,411 00
Deposites,	84,877 68
Unclaimed Dividends,	1,588 00
Balances due to other Banks,	3,006 90
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Making the whole amount of Liabilities,	\$97,883 58

The Bank has been employed, for nearly a year past, in closing its business — with what success, the above statements shew. The stockholders will have a meeting in February next, to determine whether to surrender their charter, or to go on with their business. The public can sustain no loss, and the institution is under the management of those, who will do what can be done for the benefit of the stockholders.

The Hancock Bank in Boston was visited and examined by a committee of the last Legislature, who reported its liabilities to the public, on the 24th March, 1838, to be as follows, viz :

Circulation,	\$341,968 00
Deposites and Post Notes,	89,607 28
Unclaimed Dividends,	315 00
Balances due to other Banks,	30,000 00
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Making the whole amount of Liabilities,	\$461,890 28

The Commissioners examined this Bank, on the 7th

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day of December, 1838, and found its liabilities to the public to be as follows, viz :

Circulation,	\$112,395 00
Deposites and Post Notes,	72,257 30
Unclaimed Dividends,	162 00
Due to other Banks	5,679 83

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Making the whole amount of Liabilities, \$190,494 13

The stockholders are to meet on the first Monday of February next, for the purpose of considering and determining, whether they will surrender their charter. The Commissioners are happy to report, as did the said committee, that the Bank is in the hands of "able and faithful officers," and that the interests of the public and of the stockholders are sufficiently protected.

The Amherst Bank was visited and examined by one of the Commissioners on the tenth day of July, 1838. He was aided in the examination by the president and several of the other directors. A statement of the condition of the Bank was furnished by the cashier, under oath, and the money counted and the notes discounted examined, and found to agree substantially with the statement. The other items in the statement were compared with the balances on the books, with which they were found to correspond. The books were not kept with the method and system, which are desirable, if not necessary, in a Bank ; but nothing appeared to excite suspicion, that all was not well intended. Some three months after, a failure occurred in that neighborhood, which led to the discovery, that the cashier had been, for several years, in

the habit of loaning the funds of the Bank to his friend, who had failed, without the knowledge of the directors, and had made up the deficiency in his cash, by false charges in his accounts with other Banks. The amount of balances due from other Banks, as represented in his statement, was not larger, than might, reasonably, be supposed to exist,—especially as those balances are, often, to some extent, nominal, as has been explained in the remarks made in relation to the apparent circulation of Banks. The Bank, as the Commissioners are assured by the directors, will, probably, sustain no ultimate loss,—having obtained security in part from the effects of the cashier, and the sureties in his bond being abundantly competent to make up the balance. The amount of the cashier's deficiency was about nineteen thousand five hundred dollars. The discovery of this fraud has led the Commissioners to be somewhat more strict in their inquiries in relation to the state of accounts with other Banks, which causes some additional trouble, to which the Banks, however, have most cheerfully submitted.

It is further made the duty of the Commissioners,—if, upon examination of a Bank, a majority of them shall be of the opinion, that the same is insolvent, or its condition such as to render its further progress, hazardous to the public, or to those having funds in its custody,—and, also, that it has exceeded its powers or failed to comply with all the rules, restrictions and conditions provided by law,—to apply to some one of the Justices of the Supreme Judicial Court, to issue an injunction to restrain such corporation, in whole or in part, from further proceeding with its business, until a hearing can be had, &c. &c.

In the discharge of their duties, the Commissioners have felt themselves obliged to exercise the powers, thus conferred upon them, and have applied for injunctions, which have been granted, against the City Bank in Lowell, the Roxbury Bank, and the Farmers' and Mechanics' Bank at South Adams.

The City Bank in Lowell was incorporated, March 31st, 1836, with a capital of \$150,000, all of which was to be paid in, on or before the first day of January 1837. By an additional act, it was provided, that the capital might be paid in, on or before the first Monday in October, 1837.

On the afternoon of said first Monday in October, the Commissioners, appointed for the purpose, were summoned to attend at the Bank in Lowell, to examine the gold and silver, which had been paid in, and somewhere about the hour of midnight of the same day, the said money had been examined, and the usual oath taken by the directors, "that the same had been paid in by the stockholders, toward the payment of their respective shares, and not for any other purpose, and that it was intended that the same should remain therein, as part of the capital."

The directors, to whom the said oath was administered, were Jonathan Tyler, John Nesmith, Amos Spaulding, *William Smith*, and Josiah G. Abbott.

The following gentlemen, as appeared by the books, were the sole stockholders, and owned the whole capital of the Bank, in the following proportions :

Amos Spaulding,	\$50,000
John Nesmith,	50,000
Royal Southwick,	15,000
Jonathan Tyler,	15,000
J. G. Abbott,	20,000
	<hr/>
	\$150,000

The gold and silver constituted one half the amount of the capital. The other half of the capital was paid in by the check of each one of the stockholders for half the amount of his subscription; but neither the cashier, nor any one of the original stockholders, present at the examination, could tell, on what Bank any one of said checks was drawn; though it was remembered, that no one of them was ever paid or presented for payment. And it was further testified by the cashier, and also by Mr. Nesmith, Mr. Tyler, and Mr. Southwick, that it was never expected, that said checks would be presented for payment, and each of the three last named gentlemen testified, that, on whatever Bank his own check might have been drawn, he had not funds there to meet it.

Mr. Nesmith testified, that he and Mr. Spaulding procured about forty-three thousand dollars of the specie, at the Hancock Bank, in Boston, on the agreement that specie should be returned; and twenty thousand dollars more was borrowed of the Rail-road Bank in Lowell, which was to be returned back again to the Bank. Where the rest of the specie came from, it did not appear. On the following morning, at an early hour, in compliance with the conditions of the loans, the said two several amounts of specie were restored to the Banks, to which they respectively belonged.

On the 3d October, 1837, Mr. Spaulding was chosen

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President of the corporation ; and, as appears by the directors' records, it was, then, "voted, that the stockholders be authorized to loan from the Bank the amount paid in by them respectively, until such time as the institution shall be prepared to commence operations or until a further order of the board,—the Bank holding, in pledge as security for one half thereof, a transfer of its stock."

On the 19th of the same month, two thousand dollars (being what remained of the specie, after the general flight, on the 3d,) was loaned to William Smith, by vote of the directors, on his own note, which remained in the Bank, unpaid, at the time of the examination.

The stock passed through divers hands between the 2d October, 1837, and the 12th July, 1838, when the examination took place.

On the last named day, it appeared, from a list furnished by the cashier, that the stock was held by the following named gentlemen, in the following proportions, viz. John A. Knowles, John Nesmith, Royal Southwick, Jonathan Tyler, all of Lowell, each, one share.—William Smith, of Lowell, twenty shares.—W. L. Hall, of Erie, Pean., three hundred and twenty-eight shares—Smith Gardner, of New York, two hundred and fifty shares.—Sherman Stevens, of Detroit, Mich., seven hundred and fifty shares,—and Schuyler Hodges, of the same place, one hundred and forty-eight shares, that is,—twenty-four shares were holden by citizens of this Commonwealth, and fourteen hundred and seventy-six by inhabitants and residents of distant places.

Blank Bank-bills had been procured, to the amount of about \$70,000 by a Mr. Lowery, who had, at one time, been a large stockholder, and were found in the Bank. A part of them had been filled up, and signed by the cash-



ier. **Mr. Knowles**, the President, had been requested to put his signature to the bills—having the assurance of a **Mr. Williams**, who was understood to be, in some way, connected with **Sherman Stevens**, that he had facilities for giving them an extensive and profitable circulation. **Mr. Knowles**, very properly, declined, under the circumstances, to sign them, and declined also, though requested, to resign his office.

Whereupon a meeting of stockholders, holden on the 11th June, 1838, voted to accept the “Act relating to Banks and Banking;” and in consequence, as it was understood, of the continued and persevering refusal of **Mr. Knowles**, another meeting of stockholders had been called,—not by vote of the directors, but as the cashier stated, by the directions of **Sherman Stevens**,—for the purpose of making a change in the board of directors.

The cashier of the Bank was **William W. Dibblee**, of **New York**. Such was the condition of the affairs of the Bank, when visited by the Commissioners. Being of the opinion, that its farther progress would be hazardous to the public, and that it had failed to comply with the rules, restrictions and conditions provided by law, they applied to the Chief Justice for an injunction, which was issued, and, after hearing, made perpetual.

**Thomas Hopkinson**, Esq., of **Lowell**, has been appointed receiver.

*The Roxbury Bank* was incorporated April 13th, 1836, and its charter was repealed April 24th, 1838.

*The reasons* for the repeal are, fully and very clearly, stated in the report of the special committee appointed to inquire into its doings. The Commissioners, having been informed from various sources, that the bank was, not on-

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ly not closing up its concerns, but was pushing its bills into circulation, at a distance from home, whereby innocent holders of them might be defrauded, and discredit thrown upon the other Banks in the State, though they had doubts whether it was contemplated that they should examine those Banks, whose charters had been repealed, had no doubt about their duty in this particular case. The Bank was presuming to do business as a legal banking corporation, and must therefore be subject to examination, like others. Besides, as the bills were put out and kept in circulation at a distance, there was no individual, in the neighborhood of the Bank, who felt any special interest to arrest its progress.

They, accordingly, visited the Bank, on the 19th day of July last, and traced its doings, as well as they could, from the point, where they had been left by the said committee in their report to the Legislature. That report stated the circulation, on the 5th March, 1838, at nine thousand eight hundred and six dollars. The last record of the state of the Bank, which was found, was under date of 31st March, 1838, and in that, the Bank was charged with nine thousand two hundred and forty-six dollars and fifty cents, as the full amount of its bills, then existing. This amount was found to correspond with the balance upon the ledger.

Under date of April 13th, 1838, was found the record of a vote of the directors, authorizing the president and cashier to sign ten thousand dollars of bills, and that they be delivered to the cashier to be put in circulation by means of exchanging them for other current bank-bills.

The Commissioners were satisfied, before leaving the Bank, that the circulation had, in the course of three or

four months, grown from a little over nine thousand, to nearly *seventy-eight thousand dollars*.

The directors of the Bank were found to be Amos Quimby, President, Galen Bowditch, John L. Clendennin, J. D. Williams, Simon Pender, and John Phillips, who was also the cashier.

The whole resources of the Bank consisted of forty-six notes, amounting in all to the sum of one hundred and twenty-three thousand one hundred and eighty-four dollars and seventy-four cents :—of which sum, Asa Phillips, of Fulton, N. Y., owned \$20,582; John B. Vail, of New York, \$32,136 50; Achilles V. Hammond, of Bangor, Maine, \$29,000; John Phillips, \$10,000; Rhoades Cole, New York, \$10,000; Amos Quimby, \$5,000; John L. Clendennin, \$5,000; and the remainder was due, in smaller sums, from five other persons, and just as likely to be paid, probably, as are the larger sums above named.

The Commissioners subsequently met and examined, under oath, John Phillips, the cashier, Amos Quimby, the president, J. L. Clendennin, one of the directors, and Asa Phillips, a stockholder, and apparently the chief manager in the concern.

It appeared in the course of the examination, that most of the present stockholders came into possession, and the present officers into power, while the investigations into the affairs of the corporation were going on before the committee of the Legislature. After the corporation was summoned to shew cause, why its charter should not be repealed, and before the act was finally passed, as the cashier testified, new blank bills were procured and executed and put into the hands of agents, to be exchanged

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by them for other bills. These agents were the above named John B. Vail and Asa Phillips,—both stockholders.

The cashier stated the amount of bills, then out of the Bank, to be about seventy-five thousand dollars, of which amount, forty or fifty thousand dollars were in circulation. He wholly denied, at first, that any bills had been sent out of the Bank after the repeal of the charter ; but admitted, that the bills, which had been put into the hands of agents as aforesaid, were not called home, after the charter was annulled ; and that he had never inquired, how many of such bills were, actually, in the hands of the agents at the time of the repeal, nor at any time after, though he had been in constant correspondence with them, and had seen them both, several times, at the Bank in Roxbury. He said, the bills of the Bank were redeemed both in Boston and New York,—in New York, by Rhoades Cole & Co., and in Boston, by John L. Clendennin ; but that they were not, at either place, redeemed for, or with the funds of, the Bank. The Bank redeemed its bills only at its own counter. The funds in New York and Boston were furnished by Asa Phillips, and he took the bills, as they were redeemed, and put them again, in circulation, or did what else with them he pleased.

He finally admitted, that bills of the Bank had been sent out, and had been put in circulation, after the repeal of the charter, under the following circumstances. Achilles V. Hammond of Bangor, some time in May last, applied for a loan of sixteen thousand dollars of Roxbury Bank bills, for the purpose of sustaining therewith the credit of the Globe Bank at Bangor. Some new bills of the denomination of one hundred dollars were procured, and the

loan made,—he leaving, as collateral security, \$16,000 of the stock of the Oldtown Bank and \$2,600 of the stock of the Globe Bank. He promised, that the bills should not be put in circulation; but it had been ascertained, that he was faithless, for some of them had been redeemed in Boston. Asa Phillips stated, that he had \$12,000 or \$15,000 of bills, then in his possession, which had never been put in circulation. He also said, that he was, then, in this neighborhood, to make arrangements for closing the concerns of the Bank, with as little delay as possible. But, though as he alleged, such was the sole object of his journey, he had quite forgotten to bring the Bank bills, above spoken of, with him.

An injunction was applied for, and granted. A Receiver has not yet been appointed; but all the effects of the corporation are in the hands of John J. Clarke, Esq., at the Winthrop Bank. Some of the bills have been sent to Mr. Clarke, by Asa Phillips, since the injunction was issued, and are now in his possession. The present circulation may be about fifty thousand dollars. That the bills will ever be redeemed, is more than can be reasonably expected; but it is to be hoped, that the further progress of the fraud has been successfully arrested.

The Farmers and Mechanics' Bank, at South Adams, was incorporated April 1st, 1836, with a capital of \$100,000,—all to be paid in, within one year. An additional act extended the time six months. This Bank was visited and examined by all the Commissioners, on the 24th October, 1838, and the following are the principal facts, which were proved in relation to the origin and progress of the institution.

It appeared, that on the 30th September, 1837, being

Saturday, and the last day limited by the act for paying in the capital stock, sundry persons assembled at a public house, in the village of South Adams, calling themselves the stockholders of the Farmers and Mechanics' Bank. They were not called together by the persons, or any one of them, named in the act of incorporation, in either of the modes pointed out by law; but those only were invited to attend, (and by whom they were invited did not appear,) who, it was supposed, would be likely to subscribe for stock in the bank. A subscription paper was drawn up, and the full number of shares subscribed for, by twenty-four different individuals. Forty-four shares were subscribed for by sixteen persons living in the neighborhood of the Bank, and the remaining nine hundred and fifty-six by eight persons, or in the names of eight persons, residing in the State of New York, viz. F. S. Kinney, M. B. Sherwood, E. A. Stansbury, C. Darling, G. N. Kinney, W. C. Sherwood, H. Griffin, and R. Coggswell.

The records of the Bank having been called for, some pieces of paper were produced, which, the cashier said, were all the records of which he had any knowledge. From the memoranda, thus produced by the cashier, it appears, that on the same day, Peter Briggs, George N. Kinney, David Smith, Ira Richardson, E. A. Stansbury, Isaac Dean, and Daniel P. Lapham, were chosen directors; and that the directors chose Peter Briggs president, George N. Kinney vice president, and Edward A. Stansbury cashier. The record then proceeds thus,—“*The stockholders then paid in the capital stock, and the meeting adjourned,*” &c.

No annual meeting for the choice of directors has ever been holden, — for the reason, as stated by the president,

that the stockholders and directors were pretty much the same, and the calling and holding of meetings, in the manner prescribed by law, would be, as to them, mere matters of form.

The following are the names of the present officers of the Bank, chosen, as appears by the said records, at the date affixed to their names :

Peter Briggs, Pres.	Sept. 30, 1837.
David Smith,	“ “
Daniel P. Lapham,	“ “
Resolved Wood,	Jan. 11, 1838.
David Lapham,	“ “
Resolved Wood, cashier, chosen Nov. 15, 1837.	

The payment of the capital stock being somewhat summarily, though distinctly enough, stated in the record, which has been quoted, and the books and vault of the Bank furnishing no additional evidence of that fact, the Commissioners called on Mr. Briggs, Mr. Wood, and Mr. D. P. Lapham, for further information upon the subject. They stated it to have been done thus. Each subscriber made his own note, payable on demand, to his own order, and, having endorsed it, passed it over to the cashier in payment of his shares. In this way, and in no other, the whole capital stock was paid in, on the said 30th Sept. 1837. On the 11th October, 1837, the Commissioners appointed to examine the specie, were summoned, for that purpose, to meet at South Adams. They there found and examined fifty thousand dollars, being the amount required by law, and five of the directors, of whom Messrs. Stansbury and Geo. N. Kinney were two, made oath, in common form, that the said

specie had been paid in by the stockholders on account of their shares, and was to remain as a part of the capital of the Bank,—all which facts, will fully appear in the return of the said Commissioners. Messrs. Briggs, Wood and Lapham further testified, that on the 30th Sept. 1837, when the stock was paid in as aforesaid, there was a quantity of specie, at the public-house, which had been brought from New York ; but how much they did not know. They were satisfied, however, that there was not the sum of fifty thousand dollars. Before the said 11th of October, a further amount of specie was brought from New York, which, together with that first brought, made up the required amount of fifty thousand dollars, which was examined by the Commissioners as before stated. The morning after it had been examined as aforesaid, the gentlemen from New York returned home, and took with them all the specie, except two thousand dollars. The president stated, that this was done without the consent of the directors, and that, as soon as he learned the fact, he wrote immediately to Mr. Kinney for an explanation. The answer was such as, for the time, proved satisfactory. Soon after Mr. Kinney, again, made his appearance at South Adams, bringing with him several thousand dollars of bills of Banks in New England, and ten thousand dollars in bills of the Pontiac Bank in Michigan. He then persuaded the directors to allow him to take some seventeen thousand dollars of their bills, to be by him put in circulation—he leaving the bills which he brought with him, as collateral security—and promising to redeem the Pontiac bills, with current money, in the course of ten days. He failed to perform his promise, and the directors, again, became dissatisfied ; and having invited several of the



foreign stockholders to meet them, at South Adams, for a conference in relation to the affairs of the institution, it was finally settled, on the 7th December, 1837, that the copartnership should be dissolved. The foreign stockholders furnished funds to redeem the circulation, and transferred all their shares to the directors, residing in the neighborhood of the Bank.

At the time the foreign stockholders withdrew from the institution, the circulation was estimated to be sixteen thousand and eleven dollars. When the Bank was visited by the Commissioners, it appeared, from the best evidence which could be had, that it had been reduced to three thousand one hundred twenty-two dollars twenty-five cents ; and the directors had funds in their hands for the redemption of that balance.

The whole cash-funds of the Bank were found to consist of the balance of what was lodged, as before stated, for the redemption of the bills. The stock of the Bank consisted, as it had done from the beginning, of the notes of the stockholders, without endorsers, or collateral security of any kind.

Two of the Commissioners called on the president, who was known to one of them as a gentleman of integrity and character, early in June last, for the purpose of learning the condition and prospects of the institution. They were satisfied, that the funds, which had been left for the redemption of the bills, had been applied to that object. They were, also, satisfied, as well from their interview with the president, as from information gathered in the neighborhood, that the stock could not be taken up, in any such manner, as would be essential for the safety of the public. They, therefore, advised the president to call a meeting of the stockholders and to

surrender the charter, agreeably to the provisions of the Act of April 13th, 1838. After waiting several months, and hearing nothing from the officers of the Bank, the Commissioners felt it to be their duty to make a formal and careful examination.

A rumor had reached their ears, before going to the Bank, that some gentlemen from abroad were negotiating for a purchase of the stock, and that one of them, who was to be the cashier, had actually arrived and was making arrangements for putting the Bank in operation. They ascertained from the directors before named, that the rumor was well founded. Mr. Wood, Mr. D. P. Lapham, and Mr. David Smith, being a majority of the directors, and nominal owners of nine hundred and twenty shares of the one thousand, into which the capital stock was divided, notwithstanding all their former experiences, had entered into a written contract with Alfred Williams and William Moore of Buffalo, N. Y. to convey to them or to such persons as they should nominate, the whole amount of stock held by them. Mr. Briggs said, he had not entered into any agreement to convey his shares ; but he did not expect to have any thing to do with the Bank, after the new stockholders should come into possession. The written contract was not exhibited ; but Messrs. Wood and Lapham testified, that it was on the agreement, that the stock should be, bona fide, paid in. They were not, however, quite agreed as to the terms of the contract in this particular. Mr. Wood thought only half the stock was to be paid, at first ; while Mr. Lapham understood, that the whole was to be paid, before commencing operations. Being inquired of, whether they had any personal acquaintance with the gentlemen, with whom they had contracted, they replied,

that their information was wholly derived from their co-contractor, Mr. Smith, who, travelling through the western part of the State of New York, had made inquiries as to the character and standing of Mr. Williams, and having before learned that he was disposed to speculate in the stock of the Farmers' and Mechanics' Bank, he, immediately, wrote back to Mr. Wood and Mr. Lapham, and, in due time, the conditions of sale were all settled, and the agreement committed to writing. The Commissioners could not learn, that any persons in the village of South Adams, had any particular information in relation to Mr. Williams or Mr. Moore, except such as had been furnished by Mr. Smith, as before stated, or derived from Mr. Scovell who was to be the cashier, or from a Mr. Huntington who came from Rochester and was to have some connection with the Bank, but what that connexion was, had not transpired when the Commissioners left the town. It was conjectured, that he might be going through the process of becoming an inhabitant, in order to his becoming qualified for the office of a director.

Under such a state of facts, the Commissioners deemed it their duty to apply for an injunction, which was issued, and a hearing is to be had on the first day of January next.

The Commissioners, in compliance with what they have understood to be the requirements of the law, have thus reported, generally, upon the conduct and condition of the Banks, which have been visited by them; and have specially noticed such violations of law and such irregularities in the conduct of their affairs, as seemed to them to be material. They have avoided calling Banks by name, except in some few cases, where there appeared to have been a resolute violation of law or a determined

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resistance to the clearly expressed will of the Legislature. They have, all along, felt, that the office, assigned to them, was one of no little delicacy ;—that they were not commissioned to pull down, except when the security of the public seemed to require such a measure ; and that they would but poorly perform the duties devolved upon them, by magnifying slight departures from the law, into serious offences, or by unnecessarily throwing discredit upon an institution, which was in honest hands, and needed only time and forbearance to become firmly established.

The whole number of Banks, now in operation in the Commonwealth, is one hundred and nineteen. The whole number of stockholders is twenty thousand four hundred and ninety-two.

With one exception, for which the reasons have been given, the Commissioners have visited none of the Banks, whose charters have been repealed. They do not understand, that the law contemplated, that they should do so. If they have misapprehended their duty in this particular, the Legislature will, doubtless, give the necessary instructions, and a report upon them can be made, if desirable, during the coming session.

They had hoped to have completed their first examination of all the Banks in the State before making their report, so that the twelve months, within which all the Banks are to be visited, should hereafter commence on the first of January. They have been unable to do so.

The following named Banks, all in the city of Boston, have not yet been examined ; but they will be visited within the year, as contemplated by the statute, and a special report made, should any thing occur to require it : viz. — City, Globe, Granite, Hamilton, Massachusetts, New England, State, Tremont, Union and Washington.

And the said Commissioners further report, that they have visited and examined all the Provident Institutions for Savings, established by the authority of this Commonwealth, except one in Cambridge and two in the city of Boston, and that those will be examined within the time prescribed by law.

The attention of the Commissioners, in their examinations of Savings Institutions, has been directed, especially to the investments, and the system of accountability, as provided for in the by-laws, and as carried out, in practice. An examination of the individual accounts, would be a work of great labor, and of little advantage. The investments, with very few exceptions, have all been made in some of the modes provided for by law; but there has been found a great difference of opinion as to the best mode of investment within the rules prescribed by the statute. Some have loaned, almost wholly, on collateral securities, and as far as convenient, on mortgages of real estate; while others have loaned on mortgages only as a last resort, and have gone to the extreme limits of the law, in their loans on personal security. Some have preferred Bank-stocks; while others have regarded all other modes of investment as preferable to that in Bank-stock. In several instances, the opinion has been given to the Commissioners, that the law ought to be so far altered as to allow a larger amount to be invested on personal security. But the fact, that some of the best institutions prefer all other investments to that in personal securities, furnishes a pretty strong presumption that the law is, after all, right as it stands.

#### 44 BANK COMMISSIONERS' REPORT. [Jan.

Some of them have recently sustained losses upon their Bank-stocks ; but not to an extent, at all, calculated to impair their usefulness, or seriously to affect the interests of the depositors. The investments, as far as the Commissioners could judge, have generally been made with great care, and with good judgment.

The system of accountability, in some of the institutions, which have been visited, is carried, throughout the different offices, to a state of great perfection. In those, where the amount of deposits is small, less attention is paid to rules and forms, and, in some cases, perhaps, too much has been intrusted to the management and discretion of a single officer. Such instances, however, are rare ; and, where important services are rendered gratuitously, it is hard to find fault, even, with what is not exactly legal and right.

The Commissioners have no hesitation, therefore, in reporting, that, as far as they have examined and been able to discover, these institutions are all in a safe condition, and accomplishing the charitable purposes, for which they were formed.

All which, is respectfully submitted.

WALDO FLINT,  
JULIUS ROCKWELL,  
JONATHAN SHOVE,

*Bank Commissioners.*

Boston, Dec. 31st, 1838.

COMPARATIVE STATEMENT of the Condition of the Banks in Massachusetts, at various times.

	AUG. 1829.	JUNE, 1830.	OCT. 1831.	AUG. 1832.	OCT. 1833.	MAY, 1834.
Circulation,	4,747,784 50	5,124,090 00	7,739,317 00	7,122,856 00	7,889,110 00	7,650,146 75
Balances due to other Banks,	1,566,203 93	2,128,576 35	2,477,615 43	1,993,904 15	2,881,447 50	2,393,301 25
Deposites,	4,755,009 79	6,379,825 33	8,952,913 30	9,207,554 94	11,006,122 90	13,308,059 09
	11,069,058 22	13,632,491 68	19,169,845 73	18,324,315 09	22,436,680 40	23,351,507 09

Specie,	967,210 47	1,258,444 05	919,959 73	902,205 78	922,309 84	1,160,296 09
Real Estate,	650,877 96	621,152 34	683,307 89	738,612 64	791,821 77	867,761 56
Bills of other Banks,	1,236,179 07	1,363,855 68	1,375,174 17	1,201,930 65	1,796,361 96	1,952,417 54
Balan's due from other Banks,	1,651,323 57	2,191,067 62	2,427,679 37	2,307,784 26	3,363,716 29	2,924,964 86
	4,525,591 07	5,464,539 69	5,406,121 16	5,150,533 33	6,874,209 86	6,906,460 05

Notes, &c. discounted,	28,590,896	17,27,967,234	09,36,040,760	76	38,889,727	24,45,261,008	09,47,200,477	15
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COMPARATIVE STATEMENT—Continued.

	MAY, 1835.	SEPT. 1836.	OCT. 1837.	FEB. 1838.	OCT. 1838.
Circulation,	9,430,357 72	10,892,249 50	10,273,118 00	9,100,776 75	9,400,512 75
Balances due to other Banks,	3,490,097 56	5,063,896 94	5,721,969 54	4,534,813 43	3,526,686 66
Deposites,	11,921,700 68	15,262,445 87	14,059,448 61	9,087,363 88	9,621,217 03
	24,842,155 96	31,218,582 31	30,054,536 15	22,722,953 56	22,548,416 44
Specie,	1,136,444 30	1,455,230 47	1,517,984 02	1,701,460 71	2,394,624 24
Real Estate,	922,543 78	1,140,004 65	1,155,722 96	1,100,606 30	1,066,327 21
Bills of other Banks,	2,097,797 75	3,428,852 75	2,988,617 13	2,700,275 73	2,359,387 46
Balan's due from other Banks,	3,797,926 86	5,126,900 81	5,814,224 04	4,037,618 71	5,027,800 03
	7,954,712 69	11,150,988 68	11,476,548 15	9,539,961 45	10,848,198 94
Notes, &c. discounted,	48,342,019 94	56,643,171 96	58,414,182 39	52,799,957 32	48,206,806 85



*A List of Banks, where Stockholders have accepted the Act of April 25th, 1838, concerning Banks and Banking.*

Atlas	Bank	Boston.
Mechanics	"	"
Manufacturers	"	Rowley.
Brighton	"	
Rail Road	"	Lowell.
Waltham	"	
<i>Fitchburg</i>	"	
<i>Leicester</i>	"	
Oxford	"	
Southbridge	"	
Central	"	Worcester.
Citizens	"	"
Quinsigamond	"	"
Worcester	"	"
Chicopee	"	Springfield.
Neponset	"	Canton.
Dedham	"	
Randolph	"	
Union	"	of Weymouth & Braintree.
Wrentham	"	
Attleborough	"	
Fall River	"	
Wareham	"	



SENATE.....

.....No. 6.

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R E P O R T

OF THE

L A N D A G E N T.

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SENATE.....

.....No. 6.

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R E P O R T

OF THE

L A N D A G E N T.

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**To His Excellency, EDWARD EVERETT,**

***Governor of the Commonwealth of Massachusetts :***

**The undersigned, Land Agent of said Commonwealth, has the honor most respectfully to Report to your Excellency, his proceedings in the Land Department during this year.**

**At the commencement of the year, there was on hand *an* unexpended balance of about \$1,500 of the appropriation for the Aroostook road, made 12th April, 1837, and a like sum in the hands of the Land Agent of the State of Maine. Instructions were given to Ira Fish, Esq. the agent who has been employed in the supervision of that road from its commencement, to provide the necessary provisions, provender, &c. for working out said balance, and have the same transported on to said road, at some suitable place or places, for use, before the roads should break up in the spring. Afterwards on the 4th April last, the further appropriation of \$6,500 having been granted for the same purpose, notice was immediately forwarded to Mr. Fish, with instructions to proceed without delay while the travelling permitted, to purchase and forward on to the road such further supplies as would be requisite for the additional sum. There was not time, however, to forward much, before the roads became *impassable*, consequently the expense afterwards of getting**

the needed supplies, was very considerably increased. The work commenced on the road early in the month of May. In June I was there, and examined its progress, found the work proceeding with diligence, and the construction of the road was making in a most substantial and durable manner, the culverts laid deep so as to drain off the water from the ditches on each side, and convey the same into the low grounds, the road turnpiked, and the causeways well made, and the whole sufficiently gravelled. The men continued their work till the middle of October, completing about thirty miles of the road.

Last spring, we sent Col. Ebenezer Webster to explore the lands on the St. John's and Aroostook rivers, to ascertain whether any trespasses had been committed upon the public lands during the previous winter. His report furnishes evidence of the continued and increasing depredations upon the public property. For an extract of his report, see Letter B. The information contained in said report induced us immediately to order the upper part of the Aroostook road, (which was only fit for use in the winter months,) to be smoothed off and rendered suitable for light wagons and droves at any season, that we might have the means of preventing trespass upon the Aroostook river, without the necessity of passing through the Province of New Brunswick. This was accomplished at a small expense, and puts that river now completely under our control, so far as prevention of trespass is necessary. In July, we sent Jonathan Chase on to the Aroostook river, with instructions to ascertain if any persons were there trespassing, and if so, to warn them to desist, or they would be arrested and their teams and supplies taken away. For a copy of his report, see Letter C. Notwithstanding the warning thus



given, they still persisted in their course. Mr. Hamlin the land agent of Maine, proceeded to the Aroostook river about the middle of October, taking with him a deputy sheriff, arrested one party, and induced them all to quit their depredations. His course will probably prevent further pilfering. For a copy of his report, see Letter D. I trust, therefore, we shall not have any more trouble on that river; but it will be necessary to have constant watching.

Pursuant to a Resolve which passed the 15th day of April last, making provision for opening a road from Moosehead lake, in the state of Maine, to the line of Lower Canada, on condition that the road from the town of Monson to the Lake, and also from the Canada line to its junction with the present Canada road, should first be made, or assurances that they would be made in reasonable time; we had satisfactory evidence that the road between Monson and the Lake, was nearly completed, and no doubt remained that that condition would soon be performed. It seemed necessary then, that some action on the part of the province of Lower Canada should be required without delay, that the road contemplated by said resolve might be progressing. After consulting with your Excellency upon the subject, and receiving the letter of introduction to the Earl of Durham, I proceeded to the city of Quebec, by the way of Houlton, St. John's river, and Temiscouata portage, accompanied by Elijah L. Hamlin, Esq. the land agent of Maine. We arrived at Quebec unfortunately only three or four days after Lord Durham had left that city for the Upper Province. We found, however, Mr. Turton, his Lordship's private secretary, who received us with respect and attention. We explained to him our object and

wish. He said he would lay the matter before Lord Durham, on his return ; and from the knowledge he had of his Lordship's desire, to open every avenue that would give facilities of intercourse to the Province, he had no doubt his Lordship would give immediate attention to the application. We, however, to avoid any misconstruction of our application, left in the hands of Mr. Turton a communication to Lord Durham, of which the Letter E is a copy. I have not, as yet, received any information what disposition was made of the application. It is probable that other and important affairs engaged the attention of that Government, so that a subject of so little comparative consequence was lost sight of.

A great number of settlers have taken up lots of land on the Aroostook river, and have made very considerable improvements. They have many of them applied here to be quieted in their several possessions. I replied to them, that I had no authority to sell and convey land within the disputed territory. As the Legislature, by a resolve passed the 10th day of March, 1827, directed that all proceedings on the part of this Commonwealth in relation to making roads, surveys and other acts of ownership within the territory in dispute, on or near the north-eastern boundary of Maine, should be suspended until further order of the General Court. It is somewhat difficult to determine where are the limits of the claim set up by Great Britain, but I believe the whole valley of the Aroostook river is included ; consequently most of the persons settlers as aforesaid, will come within the provisions of said resolve.

Some inquiry has been made by persons wishing to purchase tracts of land—they decline, however, to pay such prices as I deem the land to be worth, and which

sooner or later I have no doubt it will sell for, consequently no sales of consequence have been effected this year ; but as the price of timber was never higher than at the present time, it must soon follow that lands must rise and bear somewhat in proportion to the price of timber.

An account of the receipts and expenditures in this office will be made up and reported to the Legislature at the approaching session, as soon as the accounts are collected.

*I have the honor to be,*

*With great respect,*

*Your very obedient servant,*

**GEORGE W. COFFIN,**

*Land Agent.*

*Land Office, 20th Dec. 1838.*

(B.)

*Extract of Ebenezer Webster's Report.*

“ Agreeably to my instructions, 20th March, 1838, for the purpose of examining the public lands upon the St. John and Aroostook rivers, to ascertain as near as may be the amount of timber cut by trespassers the past winter. I have attended to that duty, and beg leave to report : I left Orono the 9th day of April, and arrived at the Grand Falls on the St. John's, on Thursday the 12th. On Friday I proceeded up to the boundary line, which is between two and three miles above the Grand Falls. One mile above the boundary line I found hauled on the bank, about three hundred tons of timber, of a very large size—the owner I could not ascertain ; this was on the south side of the river. On the north side one mile from the first timber, I found about one hundred tons, and one mile further up on the south side I found two hundred tons ; and twelve miles from the boundary line at the mouth of Grand river, I found about four hundred tons cut by Debays (a Frenchman.) He was supplied by Smith & Upham of Woodstock, N. B. I proceeded up to the Madawaska river, where they said there had been many teams on what they called the Sancry in Lower Canada. I proceeded up to Capt. Joseph Michaux, to where the contemplated road line struck the St. Johns from the Aroostook. I ascertained there by Joseph Chesse and Capt. Michaux, that five teams were getting timber on the Maine river, above the St. Francis. The names of the men are Christopher Mackey, Joseph Pamewick, Capt. Michaux, A. M. Wheelock, and I. Cating ; the three first are Frenchmen living at Madawaska ; the two last live in New Brunswick ; they will probably get about three thousand tons, according to the best information I could get. After getting all the information in regard to the trespass on the St. John, I hired a Frenchman and snow shoes, bought provisions, and proceeded to the Aroostook through the woods. I left the road line west a few rods, travelling south to strike the Fish-river Lake. I struck the Lake in going six miles. The Lake lays about north and south, and is

about eight miles long. I travelled about six miles on the main Lake, and found fine timber around the Lake. I discovered from the Lake a very extensive ridge of hardwood-land, very level, to the east of the Lake about one mile, laying nearly north and south, which I think will be the best chance for a road. I then proceeded westerly to the outlet of the Lake about two miles. I followed down the outlet three-fourths of a mile to another small Lake, on Fish River, which abounds in fine timber. I crossed the Lake three miles to the outlet, followed down the outlet until I struck the road line, about one mile from the outlet of the second Lake, at the twelve mile tree ; I followed the line to the fifteen mile tree and encamped ; the snow was two feet on a level between the St. John and Aroostook. I proceeded on the next day from the fifteen mile tree, to the twenty-eight mile tree, mostly black land ; here we encamped. The next day I travelled to the thirty-nine mile mark ; I struck a Stream called Beaver Stream, and finding there had been teams passing up and down on the Stream, I concluded to follow the Stream down to the Aroostook River, which was about five miles. I found about four hundred tons of timber hauled on to the Stream which must have been taken from No. 13, Fourth Range. They had probably cut more above the road line, as they had passed above with teams. They had probably cut on that Stream, from the information I could get, about one thousand tons. The timber was cut by Peter Bull, and two of the Gardens and Brown. Peter Bull lives on the Aroostook, and the other men, I understand, were Province men. I then proceeded down the Aroostook, found no trespasses committed, and returned up Stream, and on No. 12, Fifth Range, I found about five hundred tons on the south bank of the Aroostook, cut by Peter Bull, Becket and Hale ; the two latter from the Province. I then proceeded up to Machias, and found Mr. Dalton, who lived there ; he told me that Mr. Samuel Leavitt had hauled on shares, five hundred tons for Hooper. This timber is cut on No. 10 ; Maine. Leavitt is an American, and lives on No. 10. Hooper is a Province man. I was informed that William Johnson and others had been cutting timber on the Little Madawaska, and from the best information, they have cut about one thousand tons. Johnson is a Province man ; and four men were getting tim-

ber on No. 9, Sixth Range, I was informed by Mr Goss, their names are Joseph Trumbull and Daniel Dow, from the States—William Brown and John Auxly from the Province ; probably they will get four hundred tons.

I have no doubt the timber cut on the disputed territory, will amount to ten thousand tons the last winter, and they only select the largest trees that will square from twenty to thirty inches, and cut out nothing but the clear timber. I have it from good authority that within fifteen years time, there has been five hundred thousand dollars stumpage taken from the disputed territory, and but a very small part of the sum has been credited to the disputed territory by the British Government. I have been informed that merchants fit out teams and supply men to go on and plunder the timber ; they will drive it below the line on the Aroostook and St. Johns ; they will mark it and raft it with timber cut by permits. The Agent for the disputed territory will pretend to seize the timber and make them pay four dollars per ton stumpage, and will probably get one ton out of ten and no more. It is distressing to see our land in that section of the country, plundered of its valuable pine timber. They follow the St. John's and Aroostook and all their tributary streams, navigable for timber to float, and plunder all our valuable timber, getting in by hand where they cannot get on teams conveniently. In fifteen years more they will plunder from our lands all the valuable timber, and leave the country worthless, unless there is prompt and immediate means taken to prevent them. Nothing will prompt the settlement of that section of the country but the prospect of having an opportunity of getting off the timber and selling the produce to lumber-men. I was on the Aroostook and on the St. John's seven years ago, where I saw beautiful groves of pine timber standing on the banks of the Aroostook, now all plundered and carried off, and for thirty miles in extent on the river every pine tree carried off that would make timber, and every half mile an old timber landing where they have made a winter's work."

(Signed)

EBENEZER WEBSTER.

*To George W. Coffin, Esq., Land Agent of Massachusetts, and  
Elijah L. Hamlin, Esq., Land Agent of Maine :*

In obedience to your instructions of the 3d ultimo, I engaged Mr. James Simmons as an assistant, and immediately commenced a reconnoissance of the Aroostook river, for the purpose of ascertaining if any persons were cutting timber on the public lands on that river, or were making preparations to do so. I ascended the Aroostook as far as the Umcolcus stream in Township No. 9, in the Sixth Range, and found that preparations were making for extensive lumbering operations the ensuing fall and winter, by parties not only from the Province, but from the State. In township K. in the Second Range, I found a party of eight men making ton timber on the Little Madawaska. I could get neither the names nor residence of any of these men but one, whom I happened to know, by the name of Hugh Kelly, a resident in this section. In township G. I found a quantity of timber ready made, and ascertained that a party of several men were then at work upon the township, but could find only two men, whose names and residence I could not learn. In townships Nos. 12 and 13, in the Third Range, I found Peter Bull, and a Mr. Currier, with a crew of eight men, making timber upon the main river. In No. 12, in the Fourth Range, I found Reuben Bean of Winthrop, and George Knight, of Sebec, cutting and hewing timber. In No. 13, in the Fourth Range, I found two crews, of four to six men each, at work making ton timber; John Beckwith, a settler, and a Mr. Watson from the Province, were the only names I could obtain in these cases. In No. 9, in the Sixth Range, is a party putting up hay for a winter's operation. On my return down the river, I met a crew of seven men and six oxen going up. *This crew appeared to be under the direction of a man by the name of John Giverson, from the Province.*

*All these parties were expecting teams to be sent up as soon as they could get a sufficient quantity of timber prepared to keep them employed, and the timber now making, on this river, will be run*

down as soon as the fall rains shall raise the Aroostook sufficiently to float it into the St John's. I forbid all these parties, in the name of the Commonwealth and State, cutting any more timber, and requested them to quit their operations, assuring them at the same time, that, if they persisted in cutting any more timber, they would be forthwith arrested under a State process, and their teams and supplies would be taken off the territory and forfeited to the States.

From the examination which I have made, and from the preparations already making for lumbering on this river at this early season, I am satisfied that unless these operations are arrested soon by the authority of the States, a much greater amount of timber will be cut in this section, the ensuing season, than has been taken from this territory in any former year. These teams and their supplies, I have no doubt, can be easily taken off by an officer and brought down the Aroostook road to Bangor. An officer with two men, and such assistance as can now be had upon the spot, may remove all the teams and supplies now on the river. And I am of opinion, that this is the only effectual way of putting a stop to these trespasses. When they once find that they are within the reach of the civil authorities of the State, these trespasses will no longer be persisted in.

(Signed)

JONATHAN CHASE.

BANGOR, August 1, 1838.



*Land Office, Bangor, October 31, 1838.*

GEORGE W. COFFIN, Esq.,

Dear Sir :—I have just returned from the Aroostook by the way of the St. John's, having been absent about a fortnight. I took with me Mr. George W. Buckmore, a young man from Ellsworth, who is engaged in building a mill on the Aroostook, having had him specially deputed to serve precepts for the State. In No. 4 on the Aroostook road, we took three men to go through with us, and assist in taking care of the trespassers. We expected to find a crew at work on No. 10, 5 R. Maine, but found upon our arrival there, that they had quit and gone down to the Great Machias. Upon our arrival at Mr. Dalton's, at the mouth of the Machias, we learnt that two crews, one of six men and the other of seven men, with one team of six oxen, had just commenced making and hauling ton timber about eight miles up the Great Machias. I had the team taken by the Officer, and the whole concern was brought out to the main river. We here had a parley for about two days, and the result was, that the Officer took receptors for the cattle, and both crews left the ground, went up river, and hired themselves to work for the winter, with Mr. Webster and others who hold permits under you, — so much good has already grown out of the permits given by yourself, on the Massachusetts Townships. Hearing that great preparations were making below for trespassing, I dismissed two of my men and went down the river with the other two, to see what could be done. Two crews, one of three men and the other of five, had already begun to make ton timber on Beaver brook Township, No. 13, 5 R. Mass. We went up to their camps, distant about five miles, but found them empty, the crews having gone down river, hearing most probably of the trouble above. I learnt that Mr. Peter Bull, a settler below on the river, had agreed to supply these trespassers, in part, and to have their timber, and that it was intended to cut about 3000 tons this winter. I called on Mr. Bull on my passage down, and learnt from him that my information was correct. I told Mr. Bull that we

should have a man employed this winter on the Aroostook, to look after trespassers, and that if he sent any cattle on to No. 13, or any other Township, they would certainly be taken off by an Officer. Mr. Bull said to me that he should stop at once in this business ; that he would not be concerned in any trespass ; and that the men who had been cutting on No. 13, should not go back. We found three men building a camp on No. 12, 4 R. Mass.,—Mr. Munford, a settler, and Mr. Churchill, and Mr. Earskins, from the St. John's ; these persons agreed to quit immediately. About a mile up the Salmon stream, we found a crew of six men located for the winter, on Township No. 13, 3 R. Mass. ; they had got in their supplies, and were beginning to cut timber, having made about 150 tons : their names were Wilder, Stratton, James Suetor, David Suetor, Michael Kelley, James Coffee and Jonas Smiley, all from St. John's river. William Pyle, a settler, had agreed to haul their timber upon shares, and we found him at work on No. 13, cutting a road. I had a writ of trespass served upon these persons, and their supplies attached, and informed them that an Officer would be stationed this winter, on the Aroostook, and if they were found trespassing again, they would be taken to Bangor. We found two men by the names of Brown and Haskell, making timber on No. 12, 3 R. Maine ; I had these men brought out to the river, and upon representing to them the consequences of their trespass, they agreed to quit. Near the mouth of the Little Madawaska, I met Capt. McGlauthlin going up the Aroostook with six men. Capt. McGlauthlin informed me that he was sent up by the Governor to cut up the timber, and take off the teams of the trespassers, if he could in no other way, break them up. I informed him what I had done ; he said he was glad, and would most cheerfully co-operate with the Land Agents of Maine and Massachusetts in stopping the trespassers. I informed him of the information we had received of trespassing on Fish river and on the main St. John's ; he told me he should go there before he returned, and would do all in his power to protect the timber, and requested of us that we would write him and give him information of all trespasses on the Aroostook and St. John's, that should come to our knowledge, and he would endeavor to stop them. I had learnt that preparations were making to put in six or eight teams this winter

on the Little Madawaska, Capt. M. assured me that he would see that the timber was not plundered there this winter. After leaving him, I called on the settlers near the Madawaska and warned them not to trespass, &c. I think between us both, we have effectually broken up the trespassers for the present. Below this, on the line of letter H, Maine, and letter I, Mass., 2d R., we found a crew of six men at work near the river; Capt. M. had been to see them, and they were making preparations to quit, and some of the crew went down the river in company with us. Mr. Buckmore will return to the Aroostook in about three weeks, where he has a crew of men at work upon his mill, and will himself be off and on the Aroostook, during the winter.

*He is willing to look after trespassers, and will charge only for the time actually employed. I think him the best man we can employ, and that by all means, we should have him; and if I hear nothing to the contrary from you, I will make arrangements with him to attend to this business. Some of these crews will probably be back unless they are watched, and if they are found trespassing after the ground has frozen, I am determined to take their teams and supplies through the Aroostook road to Bangor.*

*Mr. Fish has finished the Aroostook road to the 30 mile tree, and has made a good winter road beyond to the mouth of the St. Croix. I expect to settle with him in a few days, and will write you how the affair stands. From what I can learn I think he has somewhat exceeded the limits of our appropriation.*

Yours, most respectfully,

(Signed)

E. L. HAMLIN.

QUEBEC, July 12, 1838.

*To His Excellency the Right Honorable John George, Earl of Durham, &c., &c., &c.*

MY LORD :—The undersigned, Land Agents for the Commonwealth of Massachusetts and the State of Maine, would respectfully call your Lordship's attention to the subject of a road leading from the city of Bangor, in said State of Maine, by the way of Mooshead Lake to the city of Quebec. With the exception of a few miles, this road is already completed between Bangor and Moosehead lake, and has been cut out from the lake to its junction with the Kennebec and Canada road, near the boundary line. About ten miles of the northern section of this road lies within the Province of Lower Canada. The sum of ten thousand dollars has been appropriated by the Legislatures of Massachusetts and Maine, to be expended by us upon this road, so soon as we shall have assurances from the government of Lower Canada, that the portion of the road lying within said Province, shall be made or commenced upon.

A steamer has already been built upon the lake, and would accommodate the travel across the same, when this road shall be opened ; and we believe that this route will furnish the most direct and easy access that can be found from the Province of Lower Canada to the Atlantic sea-board and the Provinces of New Brunswick and Nova Scotia. Your Lordship's early attention and answer is respectfully solicited, so, that if favorable we may immediately issue proposals for the construction of said road. We regret the circumstance of our not being able to have had a personal interview with your Lordship upon this subject, and to have fully explained the benefits we believe both countries would derive from the opening of this road, and to have answered all such inquiries as would naturally arise from the consideration of this matter. We have therefore left this subject in charge with T. E. Turton, Esquire, who will lay our views touching this matter before your Lordship, together with the following described documents.

1st. A letter from His Excellency Edward Everett, Governor of the Commonwealth of Massachusetts.

2d. An attested copy of a Resolve of the Legislature of Massachusetts, relating to this road.

3d. A map or plan of the location of said road.

4th. Copies of the field notes of the survey of said road.

5th. A copy of the report of John Hodgdon, Esquire, late Land Agent of Maine.

6th. A map of the State of Maine, showing the route of this road from Bangor to Quebec.

*With the highest sentiments of respect,*

*We have the honor to be,*

*Your Lordship's most ob't. servants,*

GEORGE W. COFFIN,

*Land Agent of Massachusetts.*

ELIJAH L. HAMLIN,

*Land Agent of Maine.*

**S**









**SENATE.....**

**.....No. 7.**

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**R E S O L U T I O N S**

**OF**

**MAINE, CONNECTICUT AND GEORGIA.**

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## STATE OF MAINE

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EXECUTIVE DEPARTMENT,  
Augusta, March 28, 1838. }

Sir,

In compliance with a request of the Legislature of this State, I have the honor to transmit to you the accompanying Message and Resolves,

With great respect,

Your obedient servant,

EDWARD KENT.

*His Excellency, EDWARD EVERETT,  
Governor of the Commonwealth of Massachusetts.*

# MESSAGE.

*To the Senate and House of Representatives :*

I herewith communicate for your consideration a communication addressed to me by the Secretary of State of the United States, with the correspondence therein referred to, in reference to the Northeastern Boundary. This communication is made by request of the President of the United States, and in compliance with his suggestion I ask your careful and deliberate attention to the facts and propositions therein contained. The duty devolving upon me would perhaps be performed by the simple communication of these documents, without any remarks or comments of my own. But this subject, always interesting to Maine, has become more so by this direct application on the part of the President of the United States for the expression of the wishes and the will of this State in reference to the adjustment of this long pending question, and feeling a deep interest, personally and officially, in every thing that relates to it, and anxious, mainly, that the rights and honor of Maine should not be jeopardized or impaired, I feel it to be a duty which I owe to the people, who have assigned me my part of responsibility, to speak my honest opinions and views, plainly and unreservedly, upon the grave matters now submitted to you. I ask for my views no other weight or influence than such as their intrinsic value may entitle them to ; and I desire only to be regarded as connected with you, in guarding with watchful care the great interests entrusted to us, and doing my duty in this important crisis according to my best judgment. If my views are erroneous, or if I am, in your opinion, unnecessarily strict or severe in my judgment of intentions, or too limited in my suggestions of policy, I trust to you to correct or to overrule me. I assume no right to dictate or control your action.

In the communication from Mr. Forsyth, in connection with a very lucid and interesting history of the negotiations between the two governments, we are informed that the discussions between the Federal Government and that of Great Britain have arrived at a

stage, in which the President thinks it due to the State of Maine, and necessary to the intelligent action of the General Government, to take the sense of this State in regard to the expediency of opening a direct negotiation for the establishment of a *conventional line*; and if Maine should deem an attempt to adjust the matter in controversy in that form advisable, then to ask the assent of Maine to the same.

The grave and important question, therefore, presented for your consideration, as you will more fully perceive by the documents referred to, is whether you will clothe the Executive of the United States with the unlimited power of fixing a new and conventional line, in lieu of the treaty boundary.

It is certainly gratifying to perceive that the right of Maine to be heard and consulted before the treaty line is abandoned, is fully recognized by the General Government, and I have no doubt the Legislature of Maine will approach the consideration of the proposition in the same spirit it is offered, and with an anxious desire to terminate this long pending and embarrassing question, if it can be done without too great a sacrifice of honor and right. Although the documents are somewhat voluminous, the proposition is single and simple in its character, and easily understood.

I have given to the subject all the reflection and examination I have been able to bestow, since the reception of the documents, and with a most anxious desire to acquiesce in any feasible scheme of adjustment, or any reasonable proposition for a settlement, I feel constrained to say that I can see little to hope and much to fear from the proposed departure from the treaty line.

I think that the most cursory examination of the correspondence and movements on the part of Great Britain, must satisfy any one that the leading object which her diplomatists have had in view since the result of the arbitration, has been to destroy or lay aside the treaty line—to lead us away from the clear, unambiguous, definite terms of *that treaty*, and involve us in interminable discussions, propositions and replies in relation to conventional lines, no one of which would be accepted unless it gave to them a large part of our territory. We find that in May, 1833, very soon after the President, in pursuance of the advice of the Senate, had opened a new nego-

tiation to ascertain the line *according to the treaty of 1783*, to which treaty line the negotiation of course was confined, the British minister suggested "That this perplexed and hitherto interminable question, could only be set at rest by an abandonment of the *defective* description of boundary contained in the treaty, and by the two governments mutually agreeing upon a *conventional* line more convenient to both parties." The same intention is apparent in the refusal to acquiesce in the proposition to refer the settlement of the treaty line to a commission, to be constituted of an equal number chosen by each party, with an umpire to be designated by a friendly power from the most skilful men in Europe ; or secondly, that the commission should be entirely composed of such scientific men of Europe, to be selected by some friendly power, to be attended in the survey and view of the country by agents appointed by the parties. It was in answer to this proposition that the suggestion of the impracticability of the treaty line was made, and the intention became apparent to lead us away from that inconvenient obstacle to their wishes and plans — the treaty language. The proposition was so equitable and fair, so just to all parties, and so full of promise of adjustment upon proceedings satisfactory to us, that it could not be peremptorily rejected. But, although it was entertained, the answer to it clogged the proposition with so many conditions, and so limited the powers of the commissioners, and required the concession on our part of the all-important fact that the St. Johns and Restigouche are not Atlantic rivers — that the original plan was at once deprived of all vitality or power or use, and in fact the reference would have been merely an agreement to abide by the decision, provided both parties should be satisfied and assent to it.

It is, certainly somewhat remarkable that if the assumed fact is true, viz : that the treaty line cannot be laid down or fixed according to the treaty, that so much unwillingness should be exhibited to have an attempt made to ascertain it—or if Great Britain is so strongly convinced of the justice and strength of her argument and claim, that she should be so reluctant to refer the whole question to disinterested and scientific Europeans. There is an apparent, and I doubt not a real anxiety to avoid discussion or examination *based upon the treaty*, and I fear that if we once abandon that line in search of a conventional

one, we shall never be able to bring them back again to consider the present line, or to recognise the treaty as of any binding efficacy. I fear, too, that the only question in negotiation for a conventional line, will be how large a portion of our territory we must yield up. The suggestion made by our Government to take the river St. Johns, from its mouth to its source, as the boundary, was rejected, with a simple expression of wonder that it should have been made — and our Government is told explicitly that “His Majesty’s Government cannot consent to embarrass the negotiation respecting the boundary, by mixing up with it a discussion regarding the *navigation* of the St. John, as an integral part of the question.” The intimation seems plain, that no negotiation for an exchange of territory or privileges will be entered into, but the single point will be, how shall the disputed territory be divided between the parties? I fear that if we abandon the treaty language, so clear and so decided in our favor, and so much at variance with their claim, we shall leave a certainty for an uncertainty, and throw doubt, confusion, and embarrassment over our claim and our course of action, and yield to Great Britain the great obstacle we now present to her grasping spirit — the solemn treaty of 1783.

And what security have we that any line can be fixed upon which shall be permanent, or what certainty is there that the new line may not be declared to be “impracticable,” whenever it may come in contact with any of the plans or wishes of Great Britain? It would certainly be difficult to present a stronger and clearer case than we now do; and if diplomacy and skill can manufacture doubts and embarrassments in the discussion of the question as now presented, we may well despair of ever fixing a certain and unalterable line of boundary. If I am accused of injustice or severity in these remarks, I would point, in justification, to the remarkable progress of the doubts and assertions in relation to the treaty line of boundary.

When the question as to which river was the true St. Croix of the treaty (which was the only question then in dispute) was before the Commissioners under the treaty of 1794, the British agent founded his principal argument for the westernmost river, upon the ground that a line due north from the source of that river would only include a part of one of the rivers (the St. Johns) which have their mouth

in New Brunswick. He says, "The most accustomed and convenient rule in cases of this kind, is to leave to each power respectively the sources of those rivers that empty themselves, or whose mouths are within its territory upon the sea coast, if it can be done consistently with, or in conformity with the intent of the treaty. A line due north from the source of the western or main branch of the Schoudiac or St. Croix, will fully secure this effect to the United States in every instance, and also to Great Britain in all instances except in that of the river St. John, wherein it becomes *impossible* by reason that the sources of this river are to the westward, not only of the western boundary line of Nova Scotia, but of the sources of the Penobscot, and even of the Kennebec, so that this north line *must of necessity cross the St. John*, but it will cross it in a part of it almost at the foot of the highlands, and where it ceases to be navigable. But if a north line is traced from the source of the Chelupnatcook, it will not only cross the river St. John within about fifty miles from Frederickton, the metropolis of New Brunswick, but will cut off the sources of the rivers which fall into the Bay of Chaleurs, if not many others, probably of the Meramichi, among them which fall into the Gulf of St. Lawrence, and thereby be productive of inconvenient consequences to the two powers, if not of contention between them, instead of "terminating their differences in such a manner as may be best calculated to produce mutual satisfaction and good understanding, which is one of the principal and avowed objects of the treaty." At this time, then, there was no doubt that the line running due north to the highlands of the treaty must cross the St. Johns river; and if the starting point was carried east, it is admitted that such line would cut off the Restigouch, which is nearly as far north as our claim. And certainly the line was to run equally far north, whether the starting point was east or west, unless the highlands inclined to the south. And yet we are now required, as a preliminary, to admit that the St. John and Restigouch are not Atlantic rivers, within the meaning of the treaty. In 1814, when the negotiations which resulted in the Treaty of Ghent were in progress, no pretence was made that our line did not extend beyond the St. Johns, and according to our present views.

Great Britain, then, by her negotiators, expressly stated, that



she "desires the revision of the frontier between her North American dominions and those of the United States, not with any view to an acquisition of territory, as such, but for the purpose of securing her possessions, and preventing, in future, disputes, and such a VARIATION of the line of frontier as may secure a direct communication between Quebec and Halifax." And when our negotiators peremptorily refused to agree to any *cession* of territory, the answer was, that they "were not prepared to anticipate the objections contained in the note of the American Plenipotentiaries, that they were instructed to treat for a revision of their boundary lines, with the statement which they have subsequently made, that they had no authority to *cede* any part, however insignificant, of the territories of the United States, although the proposals left it open for them to demand an *equivalent* for such cession, in territory or otherwise." And yet, now that territory, which they then offered to pay us for, is claimed as clearly their own; and that line which then was admitted and recognised as including the territory as claimed by us, is now declared to be impracticable, and must be abandoned, and a more convenient one sought for and established.

I feel most sensibly, that the question now presented is one of very grave importance, and that the action now to be had by the Legislature of Maine, may, and probably will, have a very material influence upon the relations between this Government and Great Britain.

The painful conviction is forced upon me, that Great Britain is determined to hold this territory, that she now claims, deeming it highly important as securing a connexion between her provinces in time of war and peace, and I reiterate the assertion heretofore made, that "we have little to hope from the forbearance or action of the British Government. Their aim is apparent to expunge the treaty provision, and to hold on with an unyielding grasp, to their modern claim, and reject all propositions having the treaty line for a basis." I cannot but regard it as unfortunate, that our General Government, although it has recognised our right to be consulted before any *conventional* line should be adopted, has, in a degree at least, given *assentance* to the propriety and expediency of departing from the *treaty* line.

April, 1835, Sir Charles R. Vaughan was assured "that his prompt suggestion, as His Britannic Majesty's Minister, that a negotiation should be opened for the establishment of a conventional boundary, between the two countries, was duly appreciated by the President, who, had he possessed like powers with His Majesty's Government over the subject, would have met the suggestion in a favorable spirit." Such a suggestion, it seems to me, although dictated, doubtless, by a sincere desire to end the controversy, was well calculated to lead our opponents, as a matter of policy on their part, to clog the previous proposition with insuperable difficulties, and to encourage them to persevere in their attempt to obliterate the treaty language. I think the same effect must have resulted from the singular announcement to the British Government, by the late President of the United States, in 1832, in opening the negotiation under the vote of the Senate, for a settlement of the TREATY line, "that if the Plenipotentiaries should fail in a new attempt to agree upon the line intended by the treaty of 1793, there would probably be less difficulty than before, in fixing a convenient boundary, as measures were in progress to obtain from the State of Maine more extensive powers than were before possessed, with a view of overcoming the constitutional obstacles which had opposed themselves to such an arrangement."

If a direct proposition had come to us, through the General Government, for a specific line of boundary, yielding to us territory, or privileges of navigation equivalent to the unsettled territory which we might cede to them, it would certainly have presented the question in a different aspect. But the question *now* is, as I understand it, whether we shall take the lead in abandoning the treaty, and volunteer propositions for a conventional line.

In respect to the proposition for additional surveys, as it seems to me inexpedient, for this State to acquiesce in the proposed negotiation for a conventional line, until it is *demonstrated* that the treaty line is utterly impracticable and void for uncertainty, I can have no doubt that the line ought to be run, either by a joint commission of exploration and survey, or independently by our General Government, by its own surveyors. It is evident to me, that Great Britain is determined to avoid, if possible, such an examination and explo-

ration and establishment of the line, and such proof of the real facts of the case.

It will be perceived, that the President intimates, that if the consent of Maine is not obtained, for entering into direct negotiations for a conventional line, and all other measures failing, "he will feel it to be his duty to submit another proposition to the Government of Great Britain, to refer the decision of the question to a third party."

As this right is claimed on the part of the President as within his constitutional powers, without the consent of Maine, and as no action on the part of Maine, in reference to this mode of adjustment, is asked by the President, I forbear to comment upon it, but refer it to your consideration.

Our situation, in relation to this interesting question, at this moment, demands the exercise of cool and dispassionate judgment, and careful, cautious, but firm action. We owe it to the General Government and our sister States, to do nothing rashly or hastily—to bear and forbear for the sake of the peace of the nation and the quiet of our borders. But we have a duty to perform to ourselves and our constituents, who have entrusted the rights and honor of Maine to our keeping. Relying upon your patriotism and intelligence, and caution, I place these documents before you, and ask your action upon them, in the confident hope, that the rights and the territory secured to us by our fathers, in the field and the cabinet, will not be impaired or surrendered.

EDWARD KENT.

*COUNCIL CHAMBER, March 14th, 1838.*

STATE OF MAINE.

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*Resolves in relation to the Northeastern Boundary.*

*Resolved*, That it is not expedient to give the assent of this State to the Federal Government to treat with that of Great Britain for a Conventional Line for our Northeastern Boundary, but that this State will insist on the line established by the Treaty of seventeen hundred and eighty-three.

*Resolved*, That as this State has never heretofore given her consent to the appointment of an Umpire under the Treaty of Ghent in eighteen hundred and fourteen, but has protested against the same, and as she believes it to be a grave question whether the provision in the treaty for this purpose has not done its office and is therefore no longer in force, she is not now prepared to give her assent to the appointment of a new Arbitrator.

*Resolved*, That our Senators and Representatives in Congress be requested to urge the passage of the Bill for the Survey of the Northeastern Boundary of the United States, &c. now pending in Congress, and that if said Bill shall not become a law during the present session of Congress, and if the Government of the United States, either alone or in conjunction with Great Britain or the State of Maine, shall not on or before the first day of September next, establish and appoint a commission for a survey of said Boundary line, it shall then be the imperative duty of the Governor, without further delay, to appoint forthwith suitable Commissioners and Surveyors for ascertaining, running and locating the Northeastern Boundary Line of this State and to cause the same to be carried into operation

*Resolved*, That the Governor be requested to transmit to the President of the United States one copy of his Message to the Legislature on the subject of the Northeastern Boundary and these Resolutions, and one copy of the same to each of the Heads of

Department at Washington, one copy to each of our Senators and Representatives in Congress, and one copy to the Governor of Massachusetts.

IN THE HOUSE OF REPRESENTATIVES, March, 23, 1838.

Read and passed.

ELISHA H. ALLEN, *Speaker*.

IN SENATE, March 23, 1838.

Read and passed.

N. S. LITTLEFIELD, *President*.

March 23, 1838.—Approved.

EDWARD KENT.

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SECRETARY'S OFFICE, }  
*Augusta, March 28, 1838.* }

I hereby certify that the foregoing are true copies of the originals in this office.

Attest,

SAMUEL P. BENSON,

*Secretary of State.*

STATE OF CONNECTICUT.

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*Resolutions relating to the disposition of the Public Lands of the United States.*

At a General Assembly of the State of Connecticut, holden at New Haven, in said State, on the first Wednesday of May, A. D. 1838.

*Resolved by this Assembly,* That the public lands belonging to the United States are the common property of all the States, and the proceeds of them should be appropriated to their use and benefit, and to no other purpose whatever without the consent of the States respectively.

*Resolved,* That this General Assembly do solemnly protest against a cession of any of the public lands to a State in which they may be situated, at a price less than that at which they are offered in market, and also against all pre-emption laws and the grants made under the authority of such laws.

*Resolved by this Assembly,* That our Senators and Representatives in Congress be requested to use their best endeavors to have the proceeds of the public lands divided among the States severally, as soon as it can with propriety be done.

*Resolved,* That it is expedient that a portion of the public lands belonging to the United States should be appropriated to the support of education in the original thirteen States of this Union, and that the Senators and Representatives in Congress from this State, be requested to procure the adoption of such a measure.

*Resolved by this Assembly,* That His Excellency the Governor be requested to forward a copy of these Resolutions to each of our Senators and Representatives in Congress, and also to each Executive of the several States, with a request that they may be laid before the Legislatures of their States respectively.

STATE OF CONNECTICUT, (to wit.) }  
*Office of the Secretary of State, July 13th, A. D. 1838.* }

I hereby certify that the foregoing is a true copy of record in this office. In testimony whereof, I have hereunto fixed the seal of this State, and signed the same officially, at said office, at the date last above.

Attest,

R. R. HINMAN, *Secretary.*

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STATE OF CONNECTICUT, (to wit.) }  
*Executive Office, July 13th, 1838.* } .

*To His Excellency, the Governor of*

In accordance with the directions of the late General Assembly of Connecticut, I forward to you the accompanying Resolutions, and request that the same may be communicated to the Legislature of the State over which you preside.

With sentiments of high consideration,

Your humble servant,

W. W. ELLSWORTH.

## R E P O R T

*Of the Joint Select Committee, to whom was referred that part of His Excellency's (the Governor of Connecticut) Message, relating to the increase of the National Executive patronage—as reported to the General Assembly of Connecticut, May Session, 1838.*

THE Joint select Committee to whom was referred that part of his Excellency the Governor's Message, which relates to the increase of the National Executive Patronage, have had the same under consideration, and Report :—

That although, from the pressure of other duties, they have not been able to devote that time to the subject which its importance demands—yet from a brief and general view of it, which, alone, they have been permitted to take, they are satisfied that a danger exists from this source to our Republican Institutions, calculated to excite the deepest apprehension. The increase of that patronage, and the effects of it are evinced in various modes : In the increase of revenue and expenditure—The number of officers through whose hands, and into whose pockets it passes—The character and circumstances of their appointments—And the result, in producing a general subserviency to the appointing power.

Within a little more than eight years, the expenses of the General Government have swelled from about thirteen millions, to about thirty-three millions of dollars. The *first* sum alarmed the political economists who opposed the administration of Mr. Adams, for the safety of the Republic. Their language was *then* of retrenchment—their cry is *now* that of the horse-leech, for more. For the purpose of collecting and disbursing the present enormous sums, it is believed that there has been at least a corresponding increase of Officers and Agents. The list has been prodigiously enlarged : and when to the catalogue of those who hold appointments *directly* from the Government, in the departments and bureaus at Washington—in the Custom houses—the land offices—the ramifications of the Post office—



the Army and Navy, and the Embassies abroad—we add the Contractors, Agents and employees of all kinds—many of whom are connected with the press—who depend *indirectly* upon the Government for their daily bread, it presents, indeed a formidable host. But the danger existing from the multitude of these placemen, and the immense funds which they are permitted to handle, is perhaps even less, than that arising from the principle of their selection, and the tenure of their office. The avenues to wealth and distinction in this country are so widely open, that the honest, industrious and capable, are, for the most part, too prosperous and too independent to apply for office. It is usually those of another class, who are the most eager for place, and who come up with their clamors, into the very kneading troughs of the appointing power. The test question respecting an applicant, once was, “is he honest; is he capable?—is he faithful to the Constitution?” Of late years a new and fearful rule has been adopted; a rule at war with the fundamental principles of a free government. The offices which have hitherto been considered as a *trust* for the benefit of the people, are now declared to be a *spoil*, for the use of a victorious party. And the question of course *now* is—does the applicant follow the camp of the Conqueror? Other new, and strange principles, have lately been advanced; that public officers, instead of being the agents of the law, are the mere subordinates, the creatures of the President—That this chain of office-holders, from that high functionary down, form especially, *the* Government—and that it is the first duty of the Government, to take care of themselves.

The avowal of such doctrines, seems like giving a pledge to corruption; and from the infirmity of human nature, it would be very extraordinary, if the invitation were not readily understood, and eagerly accepted. The avowal of these doctrines has drawn a line and made an issue, between the ruled and the rulers; between the many and the few. And the rights of the few are declared to be paramount. It is believed, that never before in a free country, has a claim so monstrous been asserted. Not more abhorrent to the feelings of freemen, is the doctrine of the divine rights of Kings.

In the celebrated retrenchment report, made by Mr. Benton to the Senate of the United States in 1826, a maxim is quoted from one of the numbers of the Federalist; “that power over a man’s

support has always been held and admitted to be power over his will." This is doubtless true—but under former administrations so seldom and so gently had this power been used, that it was scarcely known ; and the will was left comparatively free. It remained for an administration composed of the leading men who made that report, to establish a principle, whose unerring tendency, is to bind the will of all subordinate officers, as with a chain, to the footstool of the Executive.

In the same report, it is said, that the time will come when the nomination by the President, can carry any man through the Senate, and his recommendation can carry any measure through the two Houses of Congress—when the principle of public action will be open and avowed, "the President wants my vote, and I want his patronage ; I will vote as he wishes, and he will give me the office I wish for. What will this be but the government of one man, and what is the government of one man but a Monarchy." "Those who make the President must support him. Their political fate becomes identified, and they must stand or fall together. Right or wrong, they must support him."

Such is the language of this well-known report. Is not that which was *then* prophecy, *now* become history, and made so by the seers themselves? There are none so well qualified to prophesy correctly, as those who are about to cause the fulfilment of their own predictions.

The Committee have no time nor disposition to detail cases of political subserviency, which the doctrines and the practice of the administration have in reality produced. They refer to the knowledge of the members, and the notoriety of the facts. Are not the most unscrupulous of Executive partisans, every where, those who bear the Executive mark?

One of the most alarming evidences of danger from Government patronage, is found in the facility with which men of the highest official dignity in their respective States, are seduced by enormous Salaries, into inferior, national appointments. Governors of States, Members of Congress, and other public Functionaries, may thus be led to scramble for a Clerkship in a Department—a place in the Custom House—or the office of a Postmaster. Political divisions in the States can thus be quieted—rivalries can thus be reconciled—

opponents can be bought—and partisans rewarded. If a sycophant of the Federal Government is defeated, as the candidate for office in his own State, from a want of confidence in his ability or honesty, on the part of those who know him best, this *rejection* may be made his passport to a far more profitable place under that Government. From an unsuccessful demagogue, he may be converted into a martyr, and receive a martyr's reward.

In the collisions which may occur in Congress, between the interests of the Government and those of the people, separated as they now are, Patronage is an almost unlimited fund in the hands of the former, to buy the chosen champions of the latter. A lure may be held out so attractive, as to tempt even an officer presiding over the people's *own* branch, and extensively controlling its deliberations and proceedings, to become an instrument of the Executive.

It is thus that the independence of the State sovereignties is jeopardised, and a consolidated Government, Republican in name, but a Monarchy in fact, is in danger of being established. Well might the present Chief Magistrate of the Union, *now* take up the lamentation which he once uttered, over the lost rights of the States. At the present time, in the words of that report which has before been referred to, "The Press, with some exceptions—the Post Office—the armed force, and the appointing Power, are in the hands of the President, and the President is not in the hands of the People. The President *may*, and in the current of human affairs *will* be, against the people. The arbiters of human fate, must be against them also. This will not do. The possibility of it must be avoided. The safety of the people is the supreme law, and to ensure that safety, these arbiters of human fate must change position, and take posts on the side of the people."

*In conclusion* the Committee fully respond to the sentiments of his Excellency's Message, on the danger of National Executive Patronage, and for the purpose of endeavoring as far as possible to check its progress, they recommend the passage of the accompanying Resolutions, all of which is respectively submitted.

Per order,

E. WOODRUFF, *Chairman.*

*STATE OF CONNECTICUT, SS. }*  
*OFFICE OF THE SECRETARY OF STATE, JUNE 13th, 1838. }*

I hereby certify that the foregoing is a true copy of the original Report on file in this office.

In testimony of which, I have hereunto affixed the Public Seal of this State, and my official signature, on the day and date above mentioned.

ROYAL R. HINMAN, *Secretary.*

At a General Assembly of the State of Connecticut, holden at New Haven, in said State, on the first Wednesday of May, in the year of our Lord one thousand eight hundred and thirty-eight :

*Resolved by the Senate and House of Representatives in General Assembly convened,* That the Senators and Representatives of this State in the Congress of the United States, be, and they are hereby requested to endeavor, by all just and proper means, to procure the passage by Congress of an amendment to the Constitution of the United States, in the manner prescribed by the provisions thereof, whereby the power of nominating, appointing or removing any officers of the United States, except officers Naval and Military, Embassadors, Public Ministers and Consuls, shall not appertain to the office of President of the United States, but be vested and exercised in some other manner, as may be specified in such amendment or prescribed by law.

*Resolved,* That His Excellency the Governor is requested to transmit copies hereof to each of the Senators and Representatives aforesaid, and to the Governors of the several States, with a request that the same be communicated to their repective Legislatures.

OFFICE OF THE SECRETARY OF SAID STATE, }  
*June 13th, 1838. }*

I hereby certify that the foregoing is a true copy of Record in this office, certified by my official signature, and the Public Seal of this State.

ROYAL R. HINMAN, *Secretary.*

EXECUTIVE OFFICE, }  
*June 13th, A. D. 1838.* }

In compliance with the above Resolution, I will thank you to communicate the same to the Legislature of your State.

With sentiments of

High consideration,

Your humble servant,

W. W. ELLSWORTH.

## STATE OF GEORGIA.

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EXECUTIVE DEPARTMENT, }  
Milledgeville, 21st August, 1838. }

Sir,

In compliance with the request of the Legislature of this State, I transmit to you the copy of Resolutions passed at its late session, upon the subject of the refusal of the Executive of the State of Maine to deliver up to the Executive authority of Georgia certain fugitives from its justice ; which you are respectfully requested to communicate to the Legislature of your State at its next session.

Very respectfully,

Yours, &c.

GEORGE R. GILMER.

*To His Excellency, EDWARD EVERETT,*  
*Governor of Massachusetts.*

## HOUSE OF REPRESENTATIVES.

The Joint Committee on the state of the Republic, to whom was referred so much of the Governor's Message as relates to his correspondence with the Governor of Maine, which correspondence was occasioned by the secret and felonious abduction from the city of Savannah of a negro slave named Atticus, the property of James and Henry Sagurs, by Daniel Philbrook and Edward Kelleran, citizens of the State of Maine, and fugitives from justice ; together with the accompanying documents, (to wit,) the affidavit of James Sagurs, one of the owners of said slave, the warrant of the magistrate, and the return of the officer thereon ; the consequent demand of the Executive of Georgia upon the Executive of Maine, for the delivery of said fugitives to the agent of the State of Georgia, in order that they might be made amenable to the violated laws of the State, and the refusal of the Governor of Maine to comply with said demand,

## REPORT :

That said Committee have fully reviewed all the circumstances attending said demand and refusal ; that, in the opinion of said Committee, the Governor of Maine has signally failed to show any good and sufficient cause to justify him in refusing to comply with the just and reasonable demand of the Executive of Georgia—but that, on the contrary, the reply of the Governor of Georgia to the letter of refusal of the Governor of Maine, contains arguments, unanswerable arguments, which should at once have caused that officer, if at all disposed to comply with the requisitions of the Constitution of the United States, by performing the sacred duties which it imposed upon him, or to preserve that courtesy which should ever sub-

sist between the sister States of this Union upon any and every subject, however trifling it might be in its nature, but more particularly upon questions of such grave import as the one now under consideration, to have caused said fugitives to be arrested, and the necessary notice of such arrest given to the Governor of Georgia, so that they might be made to answer the charges preferred against them — and, if innocent, to vindicate their innocence — if guilty, to endure the just punishment of their crimes.

The refusal of Governor Dunlap, occurring at a period when the minds of the people of the South are justly excited, and their feelings most wantonly outraged by the machinations of certain fanatics of the North, who seem determined, in defiance of sound policy and the dictates of honest patriotism, and of every principle of natural and constitutional law, to keep up an excitement in relation to a certain species of property with which no interference from any quarter whatsoever will be permitted — a property guaranteed to them by the Constitution of the United States, and without which guaranty, this Union never would have been formed, appears, in the opinion of your Committee, if not like a disposition on the part of the Governor of Maine, to foster and encourage said fanatics in their unholy crusade against Southern rights, and which, if persisted in, must inevitably lead to a speedy dissolution of the Union, at least like an inclination to wink at their proceedings by screening their miserable agents who alone carry their doctrines into practical effect, by wanton depredations upon our property, from the justice of our laws.

The reasoning of His Excellency of Maine, in his letter of refusal, to the demand of the Governor of Georgia, is, in the opinion of your Committee, entirely fallacious, and evasive of the true question at issue. The affidavit of the owner of the stolen slave, directly charges, that the fugitives did, “on or about the fourth day of May, eighteen hundred and thirty-seven, *feloniously inveigle, steal, take and carry away*, a negro slave; with having, after the commission of said felony, *fled from the State*; and that they were believed at the time to be within the limits of the State of Maine. Is it for one moment to be presumed that the Governor of the State of Maine was not aware that larceny is made, by the laws of every State in the Union, felony; unless, indeed, it may not so be by those of Maine? That



State, indeed, may have, in tender mercy to thieves and incendiaries, declared it otherwise ; but this your Committee does not and cannot believe. Whether however felony or not, by the laws of Maine, is it not a crime ? It is so declared by the penal code of the State of Georgia, which fact was communicated to the Governor of Maine, by the Governor of Georgia. Has, then, the Governor of Maine done that which not only common courtesy, but justice, policy, patriotism and imperative duty required him to perform ? Has he complied with the stern requisitions of the Constitution of the United States, which he was sworn to support and defend ? No ! But he has disregarded and violated all. The Act of Congress, passed February 12th, 1793, “ respecting fugitives from justice, and persons escaping from the services of their masters ” — an Act passed in furtherance of the second section of the fourth Article of the Constitution, which says, “ a person charged in any State with treason, felony or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime ” — expressly and peremptorily declares, “ that whenever the Executive authority of any State in the Union, or of either of the Territories, Northwest or South of the river Ohio, shall demand any person as a *fugitive from justice*, of the Executive authority of any such State or Territory to which such person shall have fled, and shall moreover produce the copy of an indictment found, or an affidavit made before a magistrate of any State or Territory, as aforesaid, charging the person so demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or Chief Magistrate of the State or Territory from whence the person so charged fled, it shall be the duty of the Executive authority of the State or Territory to which such persons shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the Executive authority making such demand, or to the agent of such authority, appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear ” — and further provides, that, “ if no such agent shall appear within six months from the time of such arrest, the prisoner may be discharged,” &c. Now by

referring to the documents hereunto annexed, it will appear, that every requisition of the above recited Act, was strictly complied with by the Executive of Georgia. But the Governor of Maine, in his anxious desire to find an excuse for not doing his duty, says, so far as he has received any information relative to Philbrook and Kelleran, their visit to Georgia was in the course of their ordinary business as mariners; their vessel being at the South, they navigated it homeward, by the usual route, and in the usual time, they had stated homes to which they openly returned; at those homes they took up their residence, and conducted their affairs there without concealment, and in all respects conformably to the usage of innocent and unsuspecting citizens. Whether such a course of conduct is to be a fleeing from justice, within the meaning of the Act of Congress, and whether men so conducting are to be viewed as fugitives, may present a question of some importance, which he does not deem it necessary for him to decide. Truly a most wise conclusion. But the Governor of Maine seems to claim it as a matter of right, for him to depend upon information which he received, for refusing to deliver the fugitives, information perhaps false, against a positive oath. Surely then your Committee, speaking in behalf of the people of Georgia, if not of the entire South, may be permitted, also, to rely upon information which they have received, for reasons (independent of those already given,) why they *should* have been delivered. The vessel of the fugitives, left, it appears, the Port of Savannah, in the usual manner; she pursued the usual track, that of the broad Ocean, (the only one she could possibly pursue,) to reach her port of destination; she arrived in the usual time, and, as the Governor of Maine *would have us believe*, "they took up their residence" at their *usual homes*. On the other hand, your Committee is informed, upon good authority, that when the owner, who went in pursuit of the stolen slave, arrived at the port to which the fugitives fled, to wit: their *homes*, they themselves could not be found, although their vessel was lying in the port; the slave they did find *concealed in a barn*, and that when the party who arrested him were about leaving with the recovered property, they were pelted by the populace, and the owner with difficulty escaped from the fury of the mob.

But it is unnecessary to dilate further. All the facts of the case show conclusively, that the Governor of Maine if not disposed at the time of the demand, to comply with it for want of information, that he should have done so on the reception of Governor Schley's second letter. To that letter no reply, so far as your Committee is informed, has ever been received. Compelled, therefore, from all these circumstances to believe, that the constituted authorities of Maine do not mean to comply with the laws and constitution of the country, but in total disregard of both, to treat with contempt the just demands of Georgia, all that remains for your Committee to perform is, to suggest the remedy. This is indeed a delicate and difficult task. We cannot close our ports against the vessels of Maine. We cannot declare a non-intercourse with her citizens. Either course would be clearly unconstitutional. To seize upon the persons of her citizens, as hostages, or to levy upon their property found in our State, by way of reprisal, would also be unconstitutional, but if not it would be unjust, because it would be punishing the innocent for the guilty. What then ought to be done? Resort to the *ultima ratio*?—This, in the language of Governor Schley, cannot be resorted to, without a violation of the Federal Compact; and long, long may it be before the States of this Union shall be involved in civil conflict. But knowing that this dreadful alternative must inevitably be ultimately resorted to as a matter of self-defence, by the people of the south, in case the unhallowed example of the Governor of Maine be followed by the authorities of the other States of the north, and willing to prove to the world, by our forbearance, our reverence for the Constitution, a forbearance which it is hoped will hereafter insure us justice, your committee, although strongly disposed to recommend the passage of a law imposing a quarantine upon all vessels coming into our waters from the State of Maine, in consequence of viewing the doctrine of abolition as a moral and political pestilence, which if not checked will spread devastation and ruin over the land, at this time simply recommend the adoption of the following resolutions :

*Be it therefore unanimously resolved by the Senate and House of Representatives of the State of Georgia, in General Assembly met, That the refusal on the part of the Governor of the State of Maine, to deliver*

up, or cause to be delivered up, upon the demand of the Governor of this State, Daniel Philbrook and Edward Kalleran, who stand charged with the commission of a crime against the laws of this State, and have fled therefrom, is not only *dangerous* to the rights of the people of Georgia, but *clearly and directly in violation* of the *plain letter* of the Constitution of the *United States*, which is in the following words, to wit : “ a person charged in any State with treason, *felony*, or *other crime*, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.”

*Be it further unanimously resolved*, That the State of Georgia, and each of the other members of this Confederacy, by the adoption of the Federal Constitution, became a party thereto, *no less* for the better protection of *her own* than the *common rights and interests of all*—and when *these* ends cease to be attained, by the *faithlessness* of any to the *constitutional engagement*, she is no longer bound by *any obligations to the common compact* ; and it *then* becomes not only her right, but her *duty*, paramount to *all others*, to seek and provide protection for her *own people in her own way*.

*And be it further unanimously resolved*, That so soon as a bill of indictment shall be found true, in the Superior Court of Chatham county, against the said Daniel Philbrook and Edward Kalleran, for the offence aforesaid, the Executive of Georgia be requested to make upon the Executive of Maine, a second demand for the persons of the said fugitives, predicated upon said bill of indictment, and accompanied by such evidence as is contemplated by the act of Congress in such cases made and provided.

*And be it further unanimously resolved*, That should the Executive of Maine refuse to comply with such second demand, the Executive of Georgia be requested to transmit a copy of these Resolutions to the Executive of each State in the Union, to be presented to their several Legislatures ; and also a copy to the President of the United States, and to our Senators and Representatives in Congress, to be laid before that body. And should the Legislature of Maine, at its session next after the said Resolutions shall have been forwarded to the Executive of that State, neglect to redress the grievance herein

before set forth, it shall be the duty of the Executive of Georgia to announce the same by Proclamation, and call upon the people of the several counties, on a day in said Proclamation to be named, to elect, under like restrictions and regulations as in the election of members to the Legislature, a number of delegates equal to the number of Senators and Representatives to which they may be entitled in the General Assembly, to meet in Convention at the seat of government on a day to be fixed in said Proclamation, to take into consideration the state of the Commonwealth of Georgia, and to devise the course of her future policy, and provide all necessary safeguards for the protection of the rights of her people.

In the House of Representatives, agreed to 22d Dec. 1837.

JOSEPH DAY,

*Speaker of the House of Representatives.*

Attest : JOSEPH STURGIS, *Clerk.*

In Senate, concurred in the 25th Dec. 1837.

ROBERT M. ECHOLS,

*President of the Senate.*

Attest : JOHN T. LAMAR, *Secretary.*

Approved, 25th Dec., 1837.

GEORGE R. GILMER,

*Governor.*









SENATE.....

.....No. 8.

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SIXTH

ANNUAL REPORT OF THE TRUSTEES

OF THE

STATE LUNATIC HOSPITAL

AT WORCESTER.

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DECEMBER, 1839.

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Boston:  
DUTTON AND WENTWORTH, STATE PRINTERS.  
.....  
1839.



**SIXTH ANNUAL REPORT**  
**OF THE**  
**TRUSTEES OF THE STATE LUNATIC HOSPITAL.**  
**DECEMBER, 1838.**

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*To His Excellency EDWARD EVERETT, Governor, and the Honorable Council:*

THE Trustees of the State Lunatic Hospital, at Worcester, in compliance with the provisions of law, hereby submit their Sixth Annual

**R E P O R T :**

On no former occasion, have circumstances so auspicious, attended the performance of this duty. One fact of a most gratifying character exists now for the first time. This institution is substantially complete in all its parts. The bounty of the Legislature, from time to time most liberally bestowed, has enabled the Trustees to supply all those accommodations and appendages which, by promoting the curative processes of such an establishment, are essential constituents of a perfect whole.

During the first two years of the existence of this institution, its utility was proved to the satisfaction of the people of the Commonwealth. In that brief period of time, almost three hundred insane persons, comprising a class of cases more hopeless and deplorable than were ever before collected together, were received at the Hospital. Of this number, about one hundred were restored to reason, and the condition of the remainder greatly ameliorated. It was also ascertained during the same time, that a far greater number were still enduring

the various miseries of insanity, in garrets, cellars, cages, dens, and other places of solitude and privation. Applications made at the Hospital in behalf of these sufferers were necessarily rejected for want of room. Under these circumstances, the Trustees made an appeal to the Legislature to enlarge the institution. The appeal was successful. Two wings, capable of accommodating a hundred additional patients, were added,—one in each of the two succeeding years. Almost immediately after these wings were opened for the reception of patients, they were filled. During the two years following the application last mentioned, the Trustees again felt constrained to ask pecuniary aid for the purchase of land to supply the wants of the institution, and to furnish the means of healthful agricultural employment for the patients, as one of the best restoratives. They also requested funds for the erection of a chapel, where the religious feelings of the inmates might find some solace for their sufferings, a stimulus for their efforts at self-command, and those higher consolations of a spiritual nature which are underivable from any but a religious source. And, as might have been expected beforehand, religious motives have been found to give more energy to the thoughts and affections, than any others could have imparted. At the last session of the Legislature a further grant was made for the erection of an Infirmary, where the sick could have the comforts and alleviations appropriate to sickness, in apartments by themselves without disturbing others, and undisturbed by them. In no one instance, has any of these requests been refused or even delayed. They have been answered with a promptitude and in a spirit, which reflects the highest honor upon the Legislature, and exhibits their conduct as an example, worthy to be imitated by other States and times.

The Hospital is now possessed of a farm and garden containing about sixty acres of fertile and highly cultivated land, whose produce, during the last season, has exceeded the sum of eighteen hundred dollars in value. It has spacious and commodious rooms, where skill and kindness will, as far as possible, assuage the pains of disease and death. And that nothing may be wanting which can subserve the physical or spiritual welfare of this afflicted portion of our fellow-beings, it has a chapel in which a very large majority of all the inmates *do not forsake the assembling of themselves together* for public and social worship, every Sabbath day. In submitting this report, therefore, the Trustees have no further occasion to solicit the aid of the Legislature for buildings, appurtenances, or lands.

During the six years of the existence of this Hospital, eight hundred

and fifty-five insane persons have partaken of its remedial treatment. Of this number, three hundred and forty-four have recovered their lost reason. The residue, with few exceptions, have been reclaimed from a state of nakedness and filth; from ferocity, which assaulted relatives and friends with deadly intent; from melancholy, which poured itself out in continual tears, to a quiet, an orderly, and, to a great extent, a cheerful community, observant of the decorous usages of civilized life. And, in the opinion of the Trustees, the blessing of this success, great, manifold, precious, as it is, is hardly superior in value to a less obvious, though not a less useful and real result. At the time of the establishment of this institution, the common ideas, prevalent among the great mass of the sane community, were almost as unsound upon the subject of insanity, as the ideas of the insane themselves were upon other subjects. The general opinion entertained at that time was, that insanity is an affection of the mind, and not a disease of the body, and that it is produced by a direct visitation of Heaven, instead of being the consequence of some departure from the organic laws to which our nature is subject, which laws men can discover and obey. It was further the common belief, that the victims of this visitation of Heaven must continue to suffer its unknown and inexhaustible agonies, until rescued from them by another direct interposition of omnipotent power; instead of supposing it to be a malady, curable by such restorative influences, as have been graciously placed within our own control, and even susceptible of being prevented beforehand. So long as its causes were unknown, they could not be intelligently avoided; so long as it was supposed that the Giver of reason had withdrawn the bestowment, those appointed means would, of course, be neglected, upon the use of which the same Giver had made its restoration dependant. And in the mean time, while the friends of the maniac were idly awaiting divine interference, they would seek to secure themselves from his fury by such afflictive discipline and violence of restraint, as would only aggravate the disorder and eventually preclude all chances of recovery. Hundreds and hundreds of times has it happened, that if one, who understood the real causes and the appropriate treatment of insanity, had witnessed the contests which have been carried on for years, between the passions of a demoniac and the activity of friends striving, by imprisonment, stripes, drowning, to quell his rage, he would have been unable to determine which party was the most insane.

But the pre-eminent skill and success of the superintendent of this institution, manifested for the benefit of so many of our fellow-beings,

and in the midst of us all, have effected a deep change in public opinion. They have demonstrated that insanity is a physical disease; that it has its origin in certain natural causes, being induced by a violation of some of the organic laws upon which mental functions depend; that these causes are not mysterious and inscrutable in any peculiar sense; that they are capable of being recognized and understood, like the causes which bring on consumption or the gout; that insanity is a curable disease; that it is a disease far less dangerous to life than fevers usually are; that the means of effecting its cure have been graciously put into our hands; and finally, that not only the means of cure, but the ways of prevention, in ordinary cases, have been entrusted to us, accompanied by the responsibility of rightly using them. Insanity, therefore, is no longer to be looked upon as some vast, unknown, and awful minister of evil or judgment to mankind; as dreadful for its mysteriousness as for its actual terrors. It is not an evil to which one person is as much exposed as another; or to whose assaults any one is equally exposed at all times, and under varying circumstances. It is a calculable agency. We see why it befalls and how it may be averted. We see, that should we all obey certain laws, which are annexed to our being, and are the conditions of enjoying mental soundness, we should be exempt from its power; but we also see, that if we will transgress rules, to whose violation the dreadful consequences of insanity have been attached, it is as certain to befall us, as fire is to burn. The excellence of these discoveries is, that they convert a disease, once most formidable and appalling from its uncertainty, into a measurable and calculable agency,—an agency whose action can be put aside, in most cases, by adopting certain precautions; or can even be repelled, when expending its force upon us, by the application of certain known remedies. They make known, also, that there are certain indulgences, whose continuance is an infallible mode of bringing the full severity of its woe upon the transgressor.

The Trustees submit these remarks, not in the spirit of theorizing or speculation; but for obvious and practical purposes, as they will proceed to show.

As has been before stated, the causes of insanity have been discovered and classified. We propose to look at these causes from two different points of view.

First. In regard to their efficiency in prostrating the minds of men; that is, the relative proportions, in which these causes are found to contribute to this form of human suffering; and,

Secondly, The different degrees in which these causes are under *immediate* control ; that is, assuming them to be, to a very great extent, under human control, how soon can human intelligence, and human power diminish the number of the insane.

First. In regard to efficiency, the ascertained causes of insanity in the eight hundred and fifty-five cases at this Hospital, rank thus: 1, Intemperance; 2, Ill health of all kinds; 3, Masturbation; 4, Domestic afflictions; 5, Religious excitements; 6, Loss of property and fear of poverty; 7, Disappointed ambition; 8, Injuries of the head; 9, Use of snuff and tobacco. In a few cases, the cause of the insanity is unknown. Foreigners and citizens of other States found insane in this, have occasionally been committed, whose histories could not be ascertained. Probably we should approximate the truth very closely in distributing the unknown causes, under the above heads, according to their relative proportions.

Secondly. But if we look at the causes of insanity, not in the order of their efficiency, but in that of their subjection to human control, their position will be materially changed. The great object at the Hospital is the cure of insanity or the mitigation of its sufferings. The great object of the State and of individuals should be its prevention. The Hospital is succeeding pre-eminently well in accomplishing the former; what can be done by the State and by individuals to effect the latter purpose?

Nearly one third part of the cases, which have been in the Hospital from the beginning, are cases either proximately or remotely, of *hereditary insanity*;—that is, cases, when some near ancestor of the insane subject was insane, and has transmitted the disease to descendants, or rather, has communicated to the system of the descendants, a pre-disposition to contract that disease. This presents a large class of cases, to a great extent, beyond *present* control. One of the highest of human responsibilities was violated by the ancestors, in forming an alliance, when they bore a hereditary taint of insanity in the system, and the consequence of that violation is, that the descendants now exist with *an organization pre-adapted to incur the disease*. They are incapable of resisting such exposures to it, as to others, would be perfectly harmless. This class of cases now exists, probably to as great an extent as ever heretofore; and year after year, victim after victim must come to fill the wards of the Hospital, and slowly to expiate an ancestor's transgression. We cannot now foretell, which of the descendants, in such cases, it will be, as we cannot foretell who will be injured, when

a gun is fired into a crowd of people. But the result is none the less certain, because we cannot now designate the sufferers, in whose persons an immutable law of the Creator is to be verified. While ancestors continue to violate this law, some portion of their innocent descendants must bear the consequences. The transmitted tendency, however, does not in all cases, and by virtue of its own inherent energy, produce the result. Some proximate cause is generally requisite; some application by one's self of a torch to the train, laid by another. No means, therefore, either of prevention or of avoidance should be neglected. Still, however, this cause of insanity, so far as the present generation is concerned, is mainly beyond human control; and should those to whom the dreadful heritage has descended imitate the conduct of their ancestors, the disease may be perpetuated in the lineage for generations to come.

After hereditary insanity, whose cause antedates even the existence of its victim, there are several other classes of cases, where the seeds of the disease are sown in childhood and youth to be developed in maturer years. Looking to proximate effects, in our efforts to mitigate this species of human woe, these causes, too, seem nearly beyond *present* prevention; and hence to a great extent they may be set down as remediless. We refer to "ill health," "domestic afflictions," and "religious excitements."

Chronic ill health, extreme feebleness of constitution, or a debility in the vital powers, existing from childhood to middle life, can rarely be replaced by soundness of constitution and a healthful and vigorous performance of all the physical functions. In these cases, the conditions on which the Creator has made human health dependant have not been known, or have not been observed; and the consequence is the existence of a class of persons, who in addition to all the other evils of ill health, are more or less liable to the loss of reason. The field of labor here is with the young. It is in the power of parents so to rear and educate their children as greatly to diminish the chances of their ever becoming inmates of a Hospital for the Insane. Motives arising from this source address themselves especially to all who have the superintendence of the physical or intellectual education of the rising generation.

In point of subjection either to individual influence or to the collective power of the community, the next cause is equally beyond *immediate* control. All are liable to "domestic afflictions," and those whom we admire for the disinterestedness and fervor of their attachments;—



those, whose natures are so formed, that the existence of a friend is a boon more precious than their own life,—are most liable to be overwhelmed in the day of bereavement. The only way to obviate this cause of insanity is to cultivate throughout the community such just views of the government and attributes of God, as will tend to reconcile its members to the wise ordinations of Providence.

Nor does the third cause, above mentioned,—that of “religious excitements,” appear to be more within the remedial control of society. How wide from the appropriate office of religion it is to cause insanity,—to carry human beings backwards, as it were, from the knowledge and the contemplation of their Creator, instead of aiding their approaches towards Him! Why then, should it produce this effect! Why, in less than six years, should it have sent seventy persons to this Hospital for the Insane! It can only be because its motives and its sanctions have not been rightly addressed to individuals; or because those individuals have widely misapprehended the true nature, office, and power of religion. There seems, then, little reason to anticipate, that either of these three causes of insanity will be materially diminished, until juster notions of our human condition, duty, destination, shall pervade those portions of society, where error is now preparing its victims to become insane.

There are one or two other standing causes of insanity, which fall nearly into the same class as the preceding, but as the effects are not numerous, we shall pass them by.

But the cause of insanity, which ranks as the third in point of power to deprive its victims of reason, is perfectly within human control and that *immediately*. This form of insanity is suffered by the young. It differs from other forms, in two material respects. Before it is incurred, the way of prevention is perfectly certain; afterwards, its cure is almost impossible. No one need ever suffer it, unless he so wills; but when once infatuation has brought it on, it is too fatal to admit a second offence. It is not only most certain in its activity, but above all other kinds of insanity, it stamps its victims with every abhorrent and loathsome stigma of degradation. Such is the nature of this dreadful form of insanity, and the singleness and certainty of the cause from which it proceeds, that we feel perfectly authorized to say, if medical men, parents and teachers of youth, would do their duty on this one subject to the rising generation, this frightful and prolific cause, which stands the *third upon the list* in point of destructive efficiency, would substantially cease, in a single year. It is the vice of ignorance, not of depravity. The sufferers are, personally, less offenders than victims; but the wel-

fare of the Hospital and the interests of humanity imperatively demand, that something should be done to rescue the most moral, conscientious, and sometimes the most promising youth of the State, from the mind-wasting ravages of an indulgence, of whose terrible consequences they have never been forewarned.

So, too, intemperance is another cause of insanity susceptible of *immediate* and final suppression. This stands at the opposite end of the scale, compared with hereditary insanity. One descends, the other is self-inflicted. In all the ascertained and proximate causes of insanity at this Hospital, intemperance stands out prominently and alone, as the most successful agent in the overthrow of human reason. One other cause, that of "ill health of all kinds," exhibits a small fraction more than two thirds as many victims as intemperance. The next most prolific cause is the one last above spoken of, and which is susceptible of being prevented at once. After these two, there is no other which sends half so many inmates to the Hospital as intemperance. Here, therefore, we meet with a calamity, self-produced by the sufferer. He is not brought into the world, exposed, though innocent, to the sorest of human misfortunes, compelled to bear infirmities not his own, and to expiate offences, committed by his ancestors. But he is the voluntary procuring cause of his own fate; and the punishment he suffers looked him in the face, during the transgressions which incurred it. But though this fact ought to supply adequate motives to all for resisting this form of temptation; yet it is not so much on account of the sufferers themselves, as on account of others, that the Trustees here refer to it. They will now proceed to show how these two last classes of cases, which might be immediately prevented, bear upon the other classes, which are not the subjects of immediate prevention.

The number of the insane differs greatly in different countries. The disease is confined almost wholly to civilized nations. Among the savages of North America and of Africa it is rarely known. It is uncommon among the half-civilized nations of Asia. But it prevails to a great extent in England, France, Germany, Norway, Holland and the United States. According to the latest compiled tables, the United States rank as the fourth, among civilized nations, in the proportion which the insane bear to the whole population; their proportion being exceeded in Norway, Scotland and England only. The proportion in this country is set down at one in eight hundred. This proportion would give nearly nine hundred insane persons to Massachusetts. Owing to the cures, however, which have been effected at Charlestown and at this place, the last mentioned number must be considerably too large. Yet a great

number of applications for admission at this institution has been rejected every year, since its opening. And, although there are now (Dec. 31, 1838,) in the Hospital forty-three more inmates than there were a year ago, yet, during this year, we have been obliged to shut our doors upon not less than ninety of our afflicted fellow-beings, in whose behalf application has been here made for admission. Supposing, however, that the whole number of insane persons in Massachusetts is only about six hundred, the existing accommodations for their suitable treatment are wholly inadequate to the wants of the State. There should not be at this institution more than two hundred and twenty patients. The institution at Charlestown will not ordinarily have more than a hundred and twenty more. A new Hospital at South Boston, erected by the city, and now almost completed, is designed for but about seventy more. When that institution is occupied, there will still be a deficiency in accommodations for about two hundred of this unfortunate class of our fellow-beings.

This leads us to speak of another fact, most important in this connection. Insanity, though generally speaking one of the most curable of diseases, if seasonably attended to, becomes, when inveterate, one of the most intractable and hopeless. The twelfth Table of the Superintendent shows that upon the proper and usual basis of computation, the proportion of cures at this Hospital, in recent cases,—that is, in cases of less than one year's duration at the time when received,—is ninety-four per cent. ; while the proportion of cures in cases of more than five years' duration, has been only twelve and a half per cent., and in cases of more than ten years' duration, only three and a half per cent. Or, to present the same fact in another striking point of view, the proportion of the old cases, remaining at the end of this year, is about eighty-seven and a half per cent. ; while the proportion of recent cases remaining at the same time, is only twelve and a half per cent.

In order to present this subject, strictly, as a pecuniary or economical matter, the Trustees requested the Superintendent to prepare a separate table, (see Table 18,) showing the actual expense of twenty of the earliest cases received at the Hospital, which, owing to the duration of the disease, when admitted, were incurable, and therefore still remain ; and doubtless will continue a charge upon the State as long as life lasts. These cases are not selected, but are taken in their order. They are the first twenty cases of admission, which now remain. Their expense, before admission, is computed at only *one dollar and fifty cents a week*. These cases have already cost the Commonwealth

*fifteen hundred and fifty 25-100 dollars each.* On the other hand, and as a contrast to the above, the table shows the actual expense of the last twenty cases, which have been discharged from the Hospital, cured. It amounts only to *forty-seven 50-100 dollars each.* Hence it appears, that the expense already incurred for taking care of twenty cases, which, from neglect, had been suffered to run on until they became incurable, has been more than thirty-two times greater than the expense of the same number of cases, for which early and proper provision was made. The recent cases are now well; the old ones will doubtless continue a charge through life. However extraordinary it may appear, it is still true, that taking an average chance for cures, it would have been a pecuniary saving to the State to have taken seasonable care of these old cases, though at an expense of *eighty* dollars a week, rather than, by neglect, to have incurred the necessity of supporting them, even up to the present time.

Another aggravation of intemperance, considered as a cause of insanity will appear from the following fact. Almost all cases of insanity, originating in this cause, are ferocious and dangerous, and hence its subjects are arrested and committed at once, in order to save the lives and property of the community from the peril of their being at large. Insanity arising from other causes is usually less violent and frantic, and the subjects of it are therefore postponed to make room for the intemperate; that is, under our system, the claims of him who has made himself a voluntary demoniac are preferred to the claims of those who came innocently by a pre-disposition to the disease. The criminal exclude the innocent; and guilt is made a passport to privileges denied to misfortune.

Again, it will be seen on inspection of Table 14, that the intemperate insane furnish a less proportion of cures, than any other class except one. Thus they occupy the rooms of the Hospital earliest; they retain them longest; they virtually close the doors of the Hospital against other cases of a recent date, and by thus postponing the admission of such cases, to a later period, deprive them of the chance they otherwise would have enjoyed of a restoration to reason, to society, to their families.

Now, were it not for the two classes last above mentioned, in which the insanity is caused by the misconduct or guilt of the sufferers themselves; the liberal means provided in the State would, in a short time, it is believed, prove sufficient for the relief of its insane citizens.

In administering the affairs of the institution, a painful necessity has from time to time been imposed upon the Trustees, of remanding to the jails and houses of correction of the respective counties whence they came, a large number of the inmates, in order to make room for the more ferocious, committed by the courts. In all, seventy-three persons have been discharged from the Hospital, solely for want of room. This number is greater than that originally received from the jails, houses of correction and poor houses, when the Hospital was first opened. It will be seen, therefore, that the class of persons for whose relief it was primarily erected, and who otherwise might have participated in its privileges, have been excluded from time to time to make room for two classes of persons who have brought their insanity upon themselves by their own misconduct or crimes. In removing a part of the inmates to give accommodations to the two last named classes, the Trustees have made no discrimination between those whose insanity was occasioned without any fault or offence of their own, and those upon whom the disease was self-inflicted. This being a test not prescribed by the Legislature, they have not felt themselves authorized to apply it.

The Trustees have pointed out the above distinctions between the different causes of insanity for another reason of great practical importance. Not only is insanity regarded by the community at large as one of the greatest afflictions to which our nature is liable, but it is looked upon by some as a malady which brings disgrace as well as suffering. Instances have come to the knowledge of the Trustees, where a family has resorted to various devices, for a length of time, to conceal the insanity of one of its members; supposing that if the fact were known, it would affix a reproachful stigma upon the character of the unfortunate sufferer. In this way, the best season for recovery has been lost. But as soon as it is generally known, that the causes of insanity are various; that some of them are voluntary, others involuntary; that some of them are as free from the slightest suspicion of wrong or dishonor as any epidemic can be, while other cases are wholly referrible to the previous fault or crime of the sufferers themselves, the whole subject of insanity will be presented in a moral aspect, entirely new. Those upon whom the disease has been entailed by their ancestors, or who suffer under it from causes beyond their own control, will be regarded with deep and genuine pity; while such as are the direct authors of their own melancholy fate will be regarded—*with pity it is true, but not unmingled—with condemnation.*

*The Trustees* hope it will not be without practical results, to state

that great embarrassment, and sometimes serious evils, have ensued from the importunate demands of the friends of the insane, or of the towns which support their insane poor at the Hospital, to have a discharge granted, before a recovery is fully confirmed. It often happens that a patient, under the influence of the unsurpassed medical and moral treatment of the Superintendent, is shortly relieved from the external and obvious symptoms of insanity, while his recovery is yet imperfect, and if carried back to the scene of the exciting causes, a relapse would be almost inevitable. In this unconfirmed state, such patients are visited by their friends, or by some agent of the town where they belong, who, on perceiving their apparent exemption from the former indications of disease, insist upon an instantaneous discharge; and sometimes communicating their own views to the patient, they excite in him so strong a desire to be returned to his home and friends, as to make an enforced stay almost as dangerous as a premature removal. Under such circumstances, it is in vain to reason and to remonstrate. When the desire of being discharged is excited, the mischief is done. Six cases of this kind have occurred within the last year. A relapse has ensued, and after a few weeks, the patients have been returned in a worse condition than at first. Considering the painful necessity the Superintendent and the Trustees are under, of refusing so many earnest solicitations for admission to the Hospital, the public ought to be satisfied, that in every case, they will volunteer the discharge of a patient at the earliest hour, when, in the exercise of their best judgment, they believe it can be done with safety.

The Trustees would also, with a loud and earnest voice, call the attention of the public to the utility, to the humanity, to the necessity, of attending to the earliest indications of insanity, in whatever form they may appear. We trust that what we have said in relation to the causes of insanity will not be without avail, in diminishing both their number and their efficiency. The remarkable difference, now established by the experiments of six years, between the curability of old and of recent cases, admonishes the community never to suffer the favorable season for recovery to pass by unimproved. If the broad avenues through which this formidable enemy makes its attacks, are still left open; if it is permitted to make unresisted incursions into the domains of the soul; then, when the citadel of reason is first seen to totter under its assaults, and the pillars of judgment are shaken and torn from their places, and the passions are set on fire to consume all the treasures of joy and of hope, which have been garnered up for years;—then,

let all of human energy and alertness be instantaneously put forth to rescue the scene from total and remediless desolation.

The Trustees herewith submit the annual report of the Treasurer of the Hospital, from which it will be seen that its pecuniary concerns are in as favorable a condition as ever before. Since the enlargement of the institution, the duties of this officer have greatly increased. They have always been performed with the most exact and conscientious fidelity.

The report of the Superintendent, also, accompanies this. It is a document of extraordinary interest and value. While the Trustees would make honorable mention of all persons filling subordinate stations at the institution; they would ascribe its unexampled prosperity, to the assiduity and the skill, the talent and the benevolence of its presiding officer.

To supply the vacancy, which annually occurs, in consequence of the law that forbids an immediate reappointment of the senior member of the Board, the Hon. Edward D. Bangs, was commissioned as one of its members, at the commencement of the current year. That gentleman had attended a meeting for the organization of the Board and had made one or two of the monthly visitations of the Hospital, when, in March last, he was suddenly removed by death. It would be in vain for the Trustees, by any passing encomium of theirs, in this place, to attempt to add any thing to the reputation of a man, so universally known, as was Mr Bangs, and so highly respected by all who knew him. But without recurring to the excellence of his character in private life, or to those offices of dignity and of trust, which he so long, so ably and so acceptably filled; the Trustees cannot refrain from recording, in this place, the expression of their deep regret, that this institution should have lost a friend, who was so eminently qualified, by his knowledge of affairs and by his lively sympathy for the unfortunate, to advance its prosperity, and to obtain in its behalf the favorable regards of the public.

HORACE MANN,  
STEPHEN SALISBURY,  
ABRAHAM R. THOMPSON,  
MYRON LAWRENCE,  
WILLIAM LINCOLN.

*WORCESTER, Dec. 31st, 1838.*

## SIXTH REPORT

*Of the Superintendent of the State Lunatic Hospital, Worcester, Mass., from December 1st, 1837, to November 30th, 1838, inclusive.*

No.	Time of admission.	Present Age.	Sex.	Married or Single.	Supposed Cause.	Duration before admission.	By whom committed.	Time spent in the Hospital.	Discharged or Remains.	In what state.	Hereditary, Periodical, Suicidal, Hom-icidal, Remarks.
2	Jan'y 22 1833.	64	Male	Widower	Fanaticism	17 years	The Court	70 months	Remains	Not Improved	Homicidal. Laborer.
3	do 22	32	do	Single	Wound on the Head	3 years	do	70 months	do	do	Demented.
6	do 23	40	do	Widower	Intemperance	6 years	do	70 months	do	Improved	Homicidal. Laborer.
7	do 29	42	do	Single	do	6 years	do	64 months	Died	Not Improved	Disease, inflammation of
8	do 29	55	do	do	Unknown	10 years	The Legia.	70 months	Remains	do	do Laborer. [the bowels.
9	Feb'y 5	71	do	Widower	Loss of Property	28 years	The Court	69 months	do	do	do Hereditary.
12	do 13	40	do	do	Intemperance	14 years	do	69 months	do	do	do Foreigner.
18	do 18	65	Female	Widow	Unknown	23 years	do	69 months	do	do	do Laborer.
19	do 18	34	do	do	do	7 years	do	69 months	do	do	do Pauper.
21	do 18	34	Male	Single	Masturbation	5 years	do	69 months	do	do	Periodical. Foreigner. Pauper.
24	do 27	73	do	do	Religious	15 years	do	69 months	do	Improved	Writes poetry and sermons.
27	do 28	42	do	Married	Wound on the Head	5 years	do	69 months	do	Not Improved	Laborer. Foreigner. Pauper.
34	March 6	39	do	Single	Intemperance	4 years	do	68 months	do	do	Laborer. Foreigner. Pauper.
44	do 16	32	do	do	Unknown	16 years	do	68 months	do	do	Homicidal.
45	do 16	35	do	Widower	Religious	14 years	do	68 months	do	Improved	Demented.
56	do 28	40	do	Single	Hard Study	6 years	do	68 months	do	Not Improved	do Hereditary. Labors.
64	April 3	43	Female	do	Bad Temper	13 years	do	67 months	do	do	do Labors well.
70	do 5	53	Male	do	Intemperance	10 years	do	67 months	do	do	do Demented. Musician.
73	do 5	63	do	do	do	10 years	do	67 months	do	do	do Epileptic. Demented.
101	June 5	46	do	do	Disappointed Ambition	10 years	do	65 months	do	do	do Hereditary.
102	do 6	43	Female	do	Religious	14 years	do	65 months	do	do	do Disappointed Affection. Hered.
107	do 28	44	do	Married	Jealousy	6 years	do	65 months	do	do	do Labors well.
133	Oct. 19	39	do	do	Ill Health	2 years	do	61 months	do	do	do Demented.
147	Nov. 20	37	Male	Single	Intemperance	3 years	do	60 months	do	do	do
176	Feb'y 10 1834.	49	do	do	Disappointed Affection	10 years	do	57 months	do	do	do Labors.
177	do 14	44	do	do	do	20 years	do	57 months	do	do	do Poet and moral writer.



[illegible]

TABLES—Continued.

No.	Time of admission.	Pre-admission Age.	Sex.	Married or Single.	Supposed Cause.	Duration before admission.	By whom committed.	Time spent in Hospital.	Discharged or Remains.	In what state.	Hereditary, Periodical, Suicidal, Homicidal, Remarks.
1836.											
441	May	30	38	Female	Domestic Affliction	2 years	The Court	30 months	Discharged	Harmless	Demented.
442	do	23	42	do	Unknown	2 months	do	32 months	Remains	Not Improved	Periodical.
451	June	23	42	Male	Intemperance	2 years	do	32 months	do	do	Labors some.
452	do	29	58	Female	Puerperal	17 years	do	31 months	do	do	Demented.
454	July	5	21	Male	Idiotic	19 years	do	31 months	do	do	Idiot from birth.
455	do	5	62	do	Intemperance	Unknown	do	31 months	do	do	Plays cards, &c.; 3000 games annually.
462	do	19	23	do	Loss of Property	2 years	do	31 months	do	do	Demented.
474	Aug.	5	47	Female	Domestic Affliction	5 months	do	30 months	do	Improved	Suicidal. Labors some.
475	do	10	57	do	Ill Health	5 years	do	30 months	do	Not Improved	Demented.
491	do	19	47	do	Disappointed Ambition	10 years	do	24 months	Discharged	do	Consumption. Hereditary.
484	do	24	68	do	Indisposition of Temper	20 years	do	22 months	Died	do	Demented.
488	Sept.	22	32	Male	Masturbation	10 years	do	26 months	Remains	do	Hereditary.
493	Oct.	10	34	Female	Ill Health	1 year	do	25 months	do	Improved	Demented.
496	do	14	23	Male	Masturbation	4 years	do	15 months	Discharged	do	Harmless
506	Nov.	19	32	do	Pecuniary Embarrassment	1 year	do	25 months	Remains	Improved	Suicidal.
508	do	25	68	do	Domestic Affliction	2 years	do	17 months	Discharged	Recovered	Homicidal. Suicidal.
511	Dec.	7	65	Female	Pecuniary Troubles	14 months	do	17 months	do	Improved	Not Improved
515	do	2	35	Male	Masturbation	4 years	do	24 months	Remains	do	Demented.
1837.											
517	Jan'y	9	26	do	Epilepsy	16 years	do	23 months	do	do	do Epileptic. Hereditary.
518	do	9	22	do	Masturbation	3 years	do	23 months	do	do	do do
521	do	11	24	do	do	2 years	do	20 months	Discharged	Harmless	do Suicidal.
524	do	18	47	do	Domestic Trouble	3 years	do	15 months	do	do	do
527	Feb'y	27	27	do	Epilepsy	7 years	do	23 months	Remains	Not Improved	do Epilepsy.
532	do	8	64	do	Followed Fever	6 years	do	22 months	do	Improved	Foreigner.
536	do	27	63	Female	Puerperal	15 years	do	14 months	Discharged	Recovered	Periodical. Hered. Labored well.
538	March	7	29	Male	Masturbation	3 years	do	21 months	Remains	Not Improved	Demented.
541	do	8	25	do	do	2 years	do	21 months	do	do	do
543	do	8	36	Female	Disappointed Affection	2 years	do	31 months	do	Improved	Labors well.
544	do	8	29	Female	Masturbation	2 years	do	31 months	do	Not Improved	Foreigner.
546	do	8	31	do	Intemperance	2 years	do	21 months	do	Improved	do
546	do	10	22	do	Masturbation	2 years	do	21 months	do	Not Improved	Demented. Hereditary.

547	March	10	70	Female	Widow	Religious	18 years	The Court	21 months	Remains Discharged	Improved	Hereditary.	Periodical.	do	Labors well.
548	do	20	55	Male	Single	Masturbation	7 years	do	14 months	do	Improved	Hereditary.	do	do	do
549	do	28	80	Female	Widow	Unknown	30 years	do	14 months	do	Improved	do	do	do	do
550	April	10	82	Male	Married	Intemperance	2 years	do	20 months	do	Not Improved	Demented.	do	do	do
551	do	13	27	do	Single	Masturbation	6 years	do	20 months	do	do	do	do	do	do
552	do	24	30	Female	Married	Unknown	3 months	do	20 months	do	do	do	do	do	do
553	do	25	51	do	Single	do	Unknown	do	20 months	do	do	do	do	do	do
554	do	29	45	do	Married	Ill Health	7 years	The Over's	20 months	do	Improved	Hereditary.	do	do	do
555	do	29	25	do	Single	do	10 years	The Court	20 months	do	do	do	do	do	do
556	do	29	25	do	Single	do	8 years	The friends	11 months	Discharged	do	Hereditary.	do	do	do
557	May	1	34	do	Married	do	6 years	The Court	20 months	Remains	do	do	do	do	do
558	do	1	35	Male	Single	Intemperance	8 years	do	19 months	do	Recovered	Paralytic.	do	do	do
559	do	2	19	do	do	Ill Health	20 years	do	11 months	Discharged	Not Improved	Hereditary.	do	do	do
560	do	2	73	Female	Widow	do	1 year	The friends	9 months	Died	Recovered	do	do	do	do
561	do	14	29	do	Single	do	3 years	do	12 months	Discharged	Improved	Periodical.	do	do	do
562	do	26	24	do	do	Unknown	6 months	The Court	19 months	do	do	do	do	do	do
563	do	26	38	do	do	Love affair	12 years	The friends	18 months	do	Not Improved	Suicidal.	do	do	do
564	do	30	37	Male	Married	Masturbation	7 years	The Court	18 months	do	Improved	Suicidal.	do	do	do
565	do	30	45	Female	Widow	Puerperal	2 years	do	18 months	do	Not Improved	Suicidal.	do	do	do
566	June	7	57	do	Single	Domestic Affliction	2 years	do	13 months	Discharged	Harmless	do	do	do	do
567	do	7	22	Male	Single	Masturbation	2 months	do	6 months	do	Recovered	Suicidal.	do	do	do
568	do	19	17	Female	do	Ill Health	4 years	The friends	18 months	do	Not Improved	Demented.	do	do	do
569	do	20	31	Male	Married	Unknown	6 months	The Court	18 months	do	do	do	do	do	do
570	do	29	25	Female	Single	Ill Health	2 months	do	17 months	Discharged	Recovered	Periodical.	do	do	do
571	July	4	53	do	Married	Domestic Affliction	2 years	The friends	9 months	Remains	Improved	Hereditary.	do	do	do
572	do	8	49	do	Widow	do	Unknown	The Court	17 months	Died	Not Improved	Dropsy.	do	do	do
573	do	11	27	do	Married	do	1 year	do	14 months	do	do	Demented.	do	do	do
574	do	13	27	do	Single	do	1 year	do	17 months	Remains	Harmless	Hereditary.	do	do	do
575	do	13	38	Male	do	Masturbation	2 years	do	4 months	Discharged	Recovered	do	do	do	do
576	Aug.	2	49	do	Married	Religious	14 months	do	16 months	do	Not Improved	Foreigner.	do	do	do
577	do	2	66	Female	Single	Unknown	10 years	do	16 months	do	do	do	do	do	do
578	do	5	61	do	do	do	Unknown	do	16 months	do	do	do	do	do	do
579	do	6	57	Male	do	Intemperance	18 months	do	6 months	Died	do	Foreigner.	do	do	do
580	do	10	44	do	Married	do	1 year	do	16 months	do	do	Epileptic.	do	do	do
581	do	10	21	do	Single	Masturbation	20 months	do	6 months	Remains	do	Demented.	do	do	do
582	do	14	55	do	Married	Loss of Property	Unknown	The friends	6 months	Discharged	Improved	Suicidal.	do	do	do
583	do	15	30	do	Single	Intemperance	Unknown	The Court	16 months	Remains	Not Improved	Foreigner.	do	do	do
584	do	15	23	do	do	Masturbation	3 years	do	10 months	Discharged	do	Demented.	do	do	do
585	do	16	39	Female	Married	Domestic Affliction	6 months	do	16 months	Remains	Improved	Suicidal.	do	do	do
586	do	17	32	do	do	Ill Health	4 months	The friends	8 months	Discharged	Recovered	do	do	do	do
587	do	20	19	do	Single	do	2 months	The Court	8 months	do	do	Periodical.	do	do	do

TABLES—Continued.

No.	Time of admission.	Present age.	Sex.	Married or single.	Supposed Cause.	Duration before admission.	By whom committed.	Time spent in the Hospital.	Discharged or Remains.	In what state.	Hereditary, Periodical, Suicidal, Hom-icidal, Remarks.
624	1837.										
625	August 26	16	Male	Single	Masturbation	3 years	The Court	8 months	Discharged	Improved	Periodical. Hereditary.
626	Sept. 1	61	do	Married	Religious	6 months	do	6 months	do	Recovered	do
628	do 4	70	do	Widower	Intemperance	2 months	do	11 months	do	do	Hereditary. Periodical.
630	do 6	38	Female	Married	Domestic Affliction	2 months	do	3 months	do	Improved	Suicidal. Hereditary.
631	do 8	20	do	Single	Ill Health	1 year	do	14 months	Remains	Not Improved	Demented. do
633	do 8	36	Male	Married	Masturbation	10 years	do	14 months	do	do	Epileptic. do
634	do 8	41	do	Married	Unknown	11 years	do	10 months	Died	do	Demented.
635	do 9	34	do	Single	Masturbation	3 years	do	14 months	Remains	Recovered	Suicidal. Hereditary.
636	do 11	21	do	do	Unknown	6 months	do	3 months	Discharged	do	Hereditary. Periodical.
637	do 16	37	Female	Married	Domestic Affliction	13 years	do	6 months	do	Improved	do
639	do 19	35	do	Single	Unknown	2 years	do	8 months	do	Recovered	do
641	do 25	47	Male	do	Paralysis	8 months	do	10 months	do	Not Improved	do
642	do 28	21	do	do	Intemperance	9 months	do	3 months	do	Recovered	do
643	do 28	20	do	do	Masturbation	2 years	do	5 months	do	Not Improved	Hereditary.
644	do 29	40	Female	Married	Domestic Affliction	2 months	do	13 months	Remains	Demented.	do
645	October 3	46	do	Widow	do	2 months	do	3 months	Discharged	Recovered	Hereditary.
646	do 3	32	do	Single	Ungoverned Temper	2 years	do	6 months	do	Improved	do
647	do 3	45	do	Married	Ill Health	20 years	do	7 months	Died	Not Improved	Consumption. Hereditary.
648	do 5	48	Male	Single	Intemperance	10 years	do	14 months	Remains	do	Foreigner. Pauper. Hereditary.
649	do 5	40	do	do	Masturbation	16 years	do	10 months	Discharged	Harmless	Demented.
650	do 7	27	Female	do	Ill Health	6 months	The Over's	7 months	do	Recovered	Hereditary. Periodical.
651	do 7	59	Male	Married	Intemperance	2 months	do	7 months	do	Improved	do
652	do 10	24	Female	Single	Ill Health	3 years	The friends	8 months	do	Recovered	Marasmus.
653	do 14	18	Male	do	Masturbation	6 months	The Court	4 months	do	do	Apoplexy. Hereditary.
654	do 17	21	Female	do	Ill Health	3 months	The friends	6 months	Died	do	Demented.
655	do 17	70	Male	Widower	Unknown	2 years	The Court	8 days	do	Not Improved	do
656	do 17	40	do	Single	do	25 years	do	8 months	Discharged	Harmless	do
657	do 21	32	do	Married	do	1 month	do	5 months	do	Recovered	Suicidal.
658	do 22	23	Female	do	Puerperal	18 months	The friends	14 months	Remains	Not Improved	Hereditary.
659	do 25	25	do	Single	Masturbation	3 years	The Court	13 months	do	do	Foreigner. Demented.
660	do 26	23	do	Married	Puerperal	16 months	do	13 months	do	do	Demented.



TABLES—Continued.

No.	Time of admission.	Pres-ent Age.	Sex.	Married or Single.	Supposed Cause.	Duration before admission.	By whom committed.	Time spent in the Hospital.	Discharged or Remains.	In what state.	Hereditary. Periodical. Suicidal. Hon-icidal. Remarks.
701	1838.										
702	Jan'y 15	32	Female	Married	Ill Health	12 months	The Court	10 months	Remains	Improved	Hereditary. Suicidal.
703	do 18	33	do	do	Family Trouble	6 months	do	3 months	Discharged	Recovered	do
704	do 18	18	Male	Single	Masturbation	2 years	do	10 months	Remains	Not Improved	Demented. Hereditary. Period.
705	do 24	19	do	do	Ill Health	8 months	do	4 months	Discharged	Recovered	Hereditary. Labored well.
706	do 24	35	do	Married	Unknown	3 years	do	10 months	Remains	Improved	do
707	do 26	30	do	Single	Family Trouble	6 months	do	10 months	Discharged	Recovered	do
708	do 26	38	Female	Married	Puerperal	8 months	do	3 months	do	do	Suicidal.
709	do 29	34	do	Single	Ill Health	4 years	The friends	4 months	do	do	Periodical.
710	Feb'y 5	55	Male	Married	Intemperance	Unknown	The Court	10 months	Remains	Not Improved	Hereditary.
711	do 7	16	Female	Single	do	8 months	The friends	3 months	Discharged	Recovered	do
712	do 8	13	do	do	Ill Health	3 months	do	4 months	do	Improved	do
713	do 9	53	Male	do	Epilepsy	1 year	The Court	6 months	do	Not Improved	Epileptic. Demented.
714	do 9	30	do	do	Intemperance	2 months	do	8 months	do	Recovered	Labored well.
715	do 10	41	do	Married	Pecuniary Embarrassment	4 months	do	6 weeks	do	Improved	do
716	do 12	40	do	do	Religious Excitement	1 month	do	9 months	Remains	do	Syncope. Hereditary.
717	do 12	47	Female	Single	Intemperance	4 years	do	5 months	Died	do	Hereditary.
718	do 15	69	Male	Married	Religious	10 months	do	9 months	Discharged	Recovered	do
719	do 15	91	Female	Single	Intemperance	30 years	The Over's	9 months	Remains	Improved	Foreigner. Pauper.
720	do 15	51	do	do	Unknown	do	The Court	9 months	do	Not Improved	do
721	do 15	36	do	do	Intemperance	20 years	do	9 months	do	do	do
722	do 21	42	Male	Married	do	3 months	do	9 months	Discharged	Recovered	do
723	do 24	36	do	Single	Epilepsy	10 years	do	5 months	do	Harmless	do
724	do 24	35	do	do	Unknown	4 years	do	6 months	Remains	Improved	Periodical.
725	March 5	30	Female	do	Parental Indulgence	6 years	The friends	9 months	Discharged	do	Hereditary.
726	do 10	40	Male	Married	Unknown	5 months	The Court	3 months	do	Recovered	Periodical.
727	do 10	21	Female	Single	Ill Health	2 months	The friends	3 months	do	Improved	Suicidal.
728	do 10	19	do	do	Domestic Affliction	2 months	do	2 months	do	Recovered	Periodical.
729	do 14	32	do	Married	Ill Health	8 months	do	6 months	do	do	Hereditary.
730	do 24	53	Male	Widower	Pecuniary Embarrassment	6 months	The Court	4 months	do	Harmless	Suicidal.
731	do 24	20	Female	Single	Epilepsy	11 years	do	10 weeks	do	do	Epileptic.
732	do 31	62	do	Widow	Fear of Poverty	6 months	The friends	8 months	do	Recovered	Periodical.

733	March	51	48	Female	Widow	Domestic Affliction	5 years	The friends	4 months	Discharged	Improved	Periodical.	Suicidal.
734	April	3	30	do	Single	Fear of Poverty	1 month	do	4 months	do	do	do	Suicidal.
735	do	3	33	do	do	Unknown	2 weeks	do	5 months	Remains	Improved	do	Suicidal.
736	do	3	42	do	do	Domestic Affliction	14 months	do	7 months	do	do	do	do
737	do	4	48	do	do	Ill Health	2 months	The Court	7 months	Discharged	Recovered	do	Labored well.
738	do	4	48	do	do	Intemperance	12 months	do	3 months	do	do	do	do
739	do	5	30	Male	do	Perplexity of Mind	1 month	do	3 months	Remains	Not Improved	do	Suicidal.
740	do	6	32	do	do	Religious	3 months	do	7 months	do	Improved	do	do
741	do	9	23	do	Married	Injury of the Head	14 years	do	14 weeks	Discharged	Recovered	do	Labored well.
742	do	11	35	do	Single	Ill Health	3 months	do	3 months	do	do	do	Periodical.
743	do	13	26	Female	Married	Ill Health	1 week	do	4 months	do	do	do	do
744	do	14	41	Male	Single	Masturbation.	6 weeks	The friends	3 months	Remains	Improved	do	Labored well.
745	do	18	25	Female	do	Religious	6 months	The Court	7 months	Discharged	do	do	do
746	do	20	42	do	Married	do	3 years	The Over's	7 months	do	do	do	do
747	do	21	25	do	Single	Ill Health	3 months	The Court	7 months	do	do	do	do
748	do	22	28	Male	Married	Intemperance	5 months	do	7 months	do	do	do	do
749	May	24	45	do	do	Religious	12 months	do	7 months	do	do	do	do
750	do	1	21	Female	Single	Ill Health	8 years	do	7 months	do	do	do	do
751	do	2	28	do	do	do	1 year	The friends	3 months	Discharged	do	do	do
752	do	2	38	do	Married	do	2 years	The Court	7 months	Remains	Not Improved	do	do
753	do	3	50	do	do	Domestic Affliction	1 year	The friends	7 months	do	do	do	do
754	do	5	53	do	Single	Anxiety about Property	3 months	The friends	6 months	do	do	do	do
755	do	9	53	do	Married	Domestic Affliction	4 months	The Over's	7 weeks	Discharged	Much Improv.	do	do
756	do	12	36	do	Single	Intemperance	18 months	do	6 months	do	do	do	do
757	do	12	36	Male	do	Religious	2 months	The Court	10 weeks	Discharged	Recovered	do	do
758	do	14	48	Female	do	do	20 years	do	6 months	Remains	Improved	do	do
759	do	15	25	Male	do	do	20 years	do	6 months	do	do	do	do
760	do	16	39	Female	do	Ill Health	1 year	The friends	6 months	do	do	do	do
761	do	16	34	do	do	Unknown	5 years	The Court	6 months	do	do	do	do
762	do	17	29	do	do	Intemperance	1 year	The friends	6 months	do	do	do	do
763	do	18	53	do	Married	Fear of Poverty	13 months	The friends	6 months	do	do	do	do
764	do	21	23	do	Single	Masturbation.	Unknown	do	6 months	do	do	do	do
765	do	21	22	do	do	do	2 months	The friends	6 months	Discharged	Recovered	do	do
766	do	22	45	Female	do	Religious	5 years	The Court	6 months	Remains	Improved	do	do
767	do	28	45	do	Married	Intemperance	3 months	do	4 months	Discharged	do	do	do
768	do	29	24	Male	Single	do	3 months	do	6 months	do	do	do	do
769	do	30	30	do	Married	do	10 years	do	6 months	Remains	Not Improved	do	do
770	do	30	24	do	do	do	3 years	do	6 months	do	do	do	do
771	do	31	17	Female	Single	Religious	3 weeks	do	6 months	do	do	do	do
772	June	5	19	do	Married	Palsy	1 year	do	2 months	Discharged	Not Improved	do	do
773	do	7	59	Female	Married	Epilepsy	3 years	do	6 months	Remains	Improved	do	do
						Domestic Affliction		do					

TABLES—Continued.

No.	Time of admission.	Present Age.	Sex.	Married or Single.	Supposed Cause.	Duration before admission.	By whom committed.	Time spent in the Hospital.	Discharged or Remains.	In what state.	Hereditary, Periodical, Suicidal, Homalidal, Remarks.
773	1838.	7	Female	Single	Ill Health	3 months	The Court	6 months	Discharged	Recovered	Hereditary.
774	June	18	do	Married	Intemperance	20 months	do	2 months	Died	Improved	Epilepsy.
775	do	8	do	do	Ill Health	7 years	The friends	7 weeks	Discharged	Not Improved	Suicidal.
776	do	9	do	do	Puerperal	5 weeks	do	6 months	Remains	Improved	
777	do	9	Male	do	Unknown	1 year	do	3 months	Discharged	Not Improved	Mortification.
778	do	9	do	do	Ill Health	1 year	The Court	2 weeks	Died	do	
779	do	13	do	Married	do	4 years	do	5 months	Remains	Improved	Demented.
780	do	14	Female	Single	Domestic Affliction	2 months	do	5 months	do	Not Improved	Periodical.
781	do	14	do	Widow	do	4 years	The friends	4 months	Discharged	Recovered	Hereditary.
782	do	15	Male	Single	Masturbation	6 months	The Court	5 months	Remains	Improved	do
783	do	16	Female	do	Ill Health	3 months	do	5 months	do	do	Periodical.
784	do	17	do	Married	do	4 months	do	4 months	Discharged	Recovered	Hereditary.
785	do	17	Male	Widower	Domestic Affliction	20 years	The Court	5 months	Remains	Not Improved	do
786	do	18	Female	Single	Religious	3 months	do	5 months	do	Improved	Demented.
787	do	21	Male	Married	Unknown	1 year	do	5 months	do	do	Suicidal.
788	do	23	do	do	Masturbation	12 months	do	5 months	do	do	Hereditary.
789	do	23	Female	do	Ill Health	2 years	do	5 months	do	do	do
790	do	24	Male	do	do	18 months	do	5 months	do	do	Demented.
791	do	25	do	do	Intemperance	12 months	do	5 months	do	do	Suicidal.
792	do	29	Female	Married	Domestic Affliction	2 years	do	5 months	do	do	Hereditary.
793	July	1	do	Single	do	4 years	do	5 months	do	do	Periodical.
794	do	7	Male	Married	Intemperance	Unknown	do	5 months	do	do	Suicidal.
795	do	10	do	do	Unknown	6 months	The friends	5 months	do	Not Improved	Demented.
796	do	11	Female	Married	Religious	3 months	do	5 months	do	Improved	Hereditary.
797	do	12	Male	Single	Ill Health	15 years	do	5 months	Discharged	Recovered	Periodical.
798	do	12	Female	do	Unknown	2 years	do	5 months	Remains	Improved	Suicidal.
799	do	13	do	Married	Ill Health	3 months	The Court	5 months	do	do	do
800	do	13	Male	Single	Intemperance	6 years	The friends	3 months	Discharged	do	do
801	do	19	do	do	Unknown	13 months	The Court	5 months	Remains	Not Improved	Periodical.
802	do	19	do	do	Intemperance	14 months	do	4 months	Discharged	Recovered	do
803	do	20	do	do	do	6 weeks	do	4 months	Remains	Improved	Hereditary.
				Married	Domestic Affliction						Suicidal.



804	July	21	Female	Single	Unknown	2 years	The Court	4 months	Remains	Improved	Marasmus.
805	do	25	do	Married	Ill Health	1 year	The friends	6 weeks	Discharged	Not improved	
806	do	27	Male	Single	Intemperance	3 months	The Court	4 months	do	Recovered	
807	do	31	do	do	do	6 weeks	do	4 months	do	do	
808	August	2	Female	Married	Unknown	4 weeks	The Over's	1 week	Remains	Improved	Hereditary. Periodical.
809	do	4	do	do	Domestic Affliction	14 months	The Court	4 months	Died	Not improved	Disease of the Brain. [Hered.
810	do	9	Male	Widower	Intemperance	4 weeks	do	1 week	Remains	Improved	Hereditary. Demented.
811	do	11	do	do	Fear of Poverty	2 months	do	3 months	Died	Not improved	Hereditary. Demented.
812	do	14	Female	Domestic Affliction	Intemperance	3 months	The Over's	4 months	Remains	Improved	Hereditary.
813	do	16	Male	Single	Unknown	2 years	The Court	4 months	do	do	do
814	do	20	do	do	do	3 years	do	4 months	do	do	do
815	do	22	Female	do	Ill Health	9 months	do	3 months	do	do	do
816	do	24	Male	Married	Domestic Affliction	3 months	do	3 months	do	do	do
817	do	27	Male	Singles	Masturbation	3 years	do	10 weeks	Discharged	do	do
818	do	27	do	do	Unknown	8 years	do	3 months	Remains	do	do
819	Sept'r	4	Female	Widow	do	23 years	The friends	3 months	do	Not improved	
820	do	5	Male	Single	Epilepsy	12 years	The Court	9 weeks	Discharged	Harmless	
821	do	12	do	do	Religious	2 years	do	8 weeks	Remains	Improved	Hereditary.
822	do	22	Female	do	Intemperance	Unknown	do	8 weeks	do	Not improved	Demented.
823	do	26	Male	do	do	14 months	do	8 weeks	do	Improved	Periodical.
824	do	27	Female	do	Ill Health	4 months	do	8 weeks	do	do	Foreigner.
825	do	28	do	Married	Domestic Affliction	7 months	The friends	6 weeks	Discharged	Recovered	Hereditary. Periodical.
826	October	2	do	do	Ill Health	Unknown	do	8 weeks	Remains	Improved	Hereditary.
827	do	2	do	Single	do	6 years	The Court	8 weeks	do	do	Homicidal.
828	do	2	Male	Married	Intemperance	3 years	do	7 weeks	do	Not improved	Demented.
829	do	3	Female	Single	Parental Abuse	Unknown	do	7 weeks	do	do	do
830	do	6	do	Married	do	do	do	7 weeks	Discharged	Harmless	Hereditary.
831	do	8	Male	Single	Epilepsy	3 years	do	7 weeks	Remains	Unchanged	Epileptic.
832	do	9	Female	Married	Paralytic	12 months	The friends	6 weeks	do	Improved	do
833	do	11	Male	do	Unknown	12 months	The Over's	6 weeks	do	do	Periodical.
834	do	12	do	do	Pecuniary Embarrassment	Unknown	The Court	6 weeks	do	Unchanged	Hereditary.
835	do	12	do	do	Intemperance	2 weeks	do	5 weeks	do	Improved	Demented.
836	do	20	do	Single	Religious	1 year	do	5 weeks	do	Unchanged	do
837	do	23	do	Married	do	6 months	The Over's	5 weeks	do	do	Suicidal.
838	do	25	do	Single	Masturbation	2 years	The Court	5 weeks	do	do	Periodical.
839	do	26	do	Married	Intemperance	2 years	do	4 weeks	do	do	Demented.
840	do	27	Female	Single	do	6 months	do	4 weeks	do	Improved	Suicidal.
841	do	29	Male	Married	Intemperance	2 years	do	4 weeks	do	do	do
842	Nov'r	30	Female	Single	Domestic Affliction	2 years	do	3 weeks	do	Unchanged	Suicidal.
843	do	30	Male	Married	Unknown	2 weeks	The friends	3 weeks	do	Improved	do
844	do	31	Female	do	Domestic Affliction	2 weeks	do	3 weeks	do	Unchanged	Suicidal.
845	do	7	do	Single	Religious	2 weeks	do	3 weeks	do	Improved	do

TABLES—Continued.

No.	Time of admission.	Present Age.	Sex.	Married or Single.	Supposed Cause.	Duration before admission.	By whom committed.	Time spent in the Hospital.	Discharged or Remains.	In what state.	Hereditary, Periodical, Suicidal, Homicidal, Remarks.
844	1830.	7									
Nov'r											
845	do	10	Female	Married	Religious	2 months	The friends	3 weeks	Remains	Unchanged	
846	do	40	Male	Single	Unknown	Unknown	The Court	3 weeks	do	Improved	
847	do	10	do	do	Intemperance	3 months	do	2 weeks	do	do	
848	do	14	do	Married	Anxiety about Property	18 months	The friends	2 weeks	do	Unchanged	
849	do	14	do	Widower	Loss of Property	6 years	The Court	2 weeks	do	Improved	
850	do	17	Female	Single	Domestic Affliction	4 months	do	2 weeks	do	Unchanged	
851	do	20	Male	do	Masturbation	5 years	do	2 weeks	do	do	
852	do	20	do	do	Idiotic	21 years	do	2 weeks	do	do	
853	do	22	do	do	Unknown	1 week	do	1 week	do	do	
854	do	25	Female	do	Ungoverned Temper	7 years	do	4 days	do	do	
855	do	27	Male	do	Injury of the Head	3 years	do	3 days	do	do	
856	do	29	do	Married	Ill Health	1 week	do	1 day	do	do	

TABLE 1.

*Showing the state of the Hospital from December 1st, 1837, to November 30th, 1838.*

Patients admitted, . . . . .	177	Of the cases now in the Hospital of less duration than 1 year, . . . . .	28
Males, . . . . .	96	Of longer duration than 1 year, . . . . .	190—218
Females, . . . . .	81—177	Patients in the Hospital in the course of the year, . . . . .	363
Cases of less duration than 1 year, . . . . .	82	In the Hospital at the commencement of the year, . . . . .	185
Males, . . . . .	45	Admitted during the year, . . . . .	177—363
Females, . . . . .	37—82		
Cases of longer duration than 1 year, . . . . .	95		
Males, . . . . .	51		
Females, . . . . .	44—95—177		
Admitted by the Courts, . . . . .	123		
Private, . . . . .	54—177		
Remain at the end of the year, . . . . .	218		
Males, . . . . .	115		
Females, . . . . .	103—218		

TABLE 2.

*Discharges and Deaths.*

	No. of each sex.	Recov'd.	Improv'd.	Not improv'd.	Harmless.	Died.	Total.
Patients discharged, 144							
Males, . . . . .	84	45	11	8	10	10	
Females, . . . . .	60	31	13	6	4	6	
	144	76	24	14	14	16	144
Of duration less than 1 year, . . . . .	74						
Males, . . . . .	47	38	2	0	0	3	
Females, . . . . .	27	26	4	0	0	1	
	74	64	6	0	0	4	74
Of duration more than 1 year, . . . . .	70						
Males, . . . . .	42	7	10	8	10	7	
Females, . . . . .	28	5	8	6	4	5	
	70	12	18	14	14	12	70
Remains, Nov. 30, . . . . .	218					188	
Males, . . . . .	115					20	
Females, . . . . .	103—218					10—218	
Foreigners in the Hospital in the course of the year, . . . . .						30	
Natives of other States, . . . . .						15—45	

TABLE 3.

Duration of Insanity with those remaining in the Hospital, December 1st, 1838.			Ages of Patients in the Hospital, December 1st, 1838.		
Less than 1 year,	.	28	Under 20,	.	4
From 1 to 5 years,	.	65	From 20 to 25,	.	25
5 to 10,	.	44	25 to 30,	.	21
10 to 15,	.	27	30 to 35,	.	34
15 to 20,	.	14	35 to 40,	.	35
20 to 25,	.	15	40 to 45,	.	30
25 to 30,	.	3	45 to 50,	.	23
Over 30,	.	3	50 to 55,	.	16
Unknown,	.	19	55 to 60,	.	8
		218	60 to 65,	.	6
			65 to 70,	.	8
			70 to 75,	.	3
			75 to 80,	.	1
			Unknown,	.	4
					218

TABLE 4.

Number admitted and discharged each month.			Average of Patients in the Hospital each month.		
	Admitted.	Discharged.			
December,	13	8	December,	.	190
January,	17	7	January,	.	196
February,	16	6	February,	.	208
March,	9	7	March,	.	212
April,	15	14	April,	.	215½
May,	22	21	May,	.	212½
June,	21	17	June,	.	217
July,	16	14	July,	.	220½
August,	10	18	August,	.	217
September,	7	9	September,	.	210½
October,	16	11	October,	.	213½
November,	15	12	November,	.	218½
	177	144	Average for 1838, about 211		

TABLE 5.

*Statistics of the State Lunatic Hospital, from Jan. 1833 to Dec. 1, 1838.*

	1833.	1834.	1835.	1836.	1837.	1838.	Total.
Admissions, . . . . .	153	119	113	125	168	177	855
Discharged, including Deaths and Elopements, . . . . .	39	115	112	106	121	144	637
Discharged, recovered, . . . . .	25	64	52	57	69	76	343
Discharged, improved, . . . . .	7	22	23	17	23	24	116
Died, . . . . .	4	8	8	8	9	16	53
Eloped, . . . . .	1	1	1	1	0	0	4
Patients in the Hospital in the course of each year, . . . . .	153	233	241	245	306	362	855
Patients remaining at the end of each year, . . . . .	114	118	119	138	185	218	
Males admitted, . . . . .	96	79	51	66	94	96	482
Females admitted, . . . . .	57	39	62	59	75	81	373
Males discharged, . . . . .	20	59	57	56	65	74	331
Females discharged, . . . . .	15	49	46	41	47	54	252
Males died, . . . . .	3	5	4	6	6	10	34
Females died, . . . . .	1	3	4	2	3	6	19
Patients sent by Courts, . . . . .	109	55	89	117	129	123	
Private, . . . . .	44	64	21	8	39	54	
Recoveries: . . . . .	25	64	52	58	69	76	344
Males, . . . . .	13	33	27	32	37	45	
Females, . . . . .	12	31	25	26	32	31	
Average in the Hospital each year, . . . . .	107	117	120	127	163	211	

TABLE 6.

*Statistics of the different Seasons.*

	1833.	1834.	1835.	1836.	1837.	1838.	Total.
Admissions in Winter,	27	26	24	23	26	46	172
Admissions in Spring,	71	35	31	36	49	46	268
Admissions in Summer,	21	30	30	42	40	47	210
Admissions in Autumn,	21	28	28	24	53	38	202
Discharges in Winter,	0	22	21	20	15	18	86
Discharges in Spring,	7	33	30	33	38	37	178
Discharges in Summer,	10	28	31	24	30	43	166
Discharges in Autumn,	24	24	22	21	38	32	161
Recoveries in Winter,	0	12	14	11	10	15	62
Recoveries in Spring,	0	20	13	14	17	23	87
Recoveries in Summer,	9	16	1	12	15	18	86
Recoveries in Autumn,	16	15	12	20	27	20	110
Deaths in Winter,	0	3	1	0	1	3	8
Deaths in Spring,	2	2	2	1	2	5	14
Deaths in Summer,	2	3	2	4	1	5	17
Deaths in Autumn,	0	0	3	3	5	3	14

TABLE 7.

*Classification of Insanity.*

	Whole No.	Each Sex.	Curable or Cured.	Total of Curable or Cured.
Mania, . . .	444			
Males, . . .		236	137	
Females, . . .		208	131	268
Melancholia, . . .	235			
Males, . . .		129	75	
Females, . . .		106	65	140
Dementia, . . .	128			
Males, . . .		77	2	
Females, . . .		51	3	5
Idiots, . . .	8			
Males, . . .		8	A few cases	not clas'fied

TABLE 8.

*Of Occupation.*

Farmers, . . . . .	102	Stonecutters, . . . . .	2
Laborers, . . . . .	89	Comb-makers, . . . . .	2
Shoemakers, . . . . .	39	Musicians, . . . . .	2
Seamen, . . . . .	32	Turners, . . . . .	2
Merchants, . . . . .	28	Harness-makers, . . . . .	2
Carpenters, . . . . .	23	Pedlers, . . . . .	2
Manufacturers, . . . . .	22	Physicians, . . . . .	2
Teachers, . . . . .	20	Broom-makers, . . . . .	2
Blacksmiths, . . . . .	12	Coppersmiths, . . . . .	2
Printers, . . . . .	11	Coachmen, . . . . .	2
Tailors, . . . . .	8	Butchers, . . . . .	2
Students, . . . . .	8	Currier, . . . . .	1
Machinists, . . . . .	7	Bricklayer, . . . . .	1
Clothiers, . . . . .	6	Lawyer, . . . . .	1
Millers, . . . . .	4	Jeweller, . . . . .	1
Coopers, . . . . .	4	Watchman, . . . . .	1
Painters, . . . . .	4	Drover, . . . . .	1
Paper-makers, . . . . .	3	News Collector, . . . . .	1
Calico Printers, . . . . .	3	Rope-maker, . . . . .	1
Cabinet-makers, . . . . .	3	Engineer, . . . . .	1
Clergymen, . . . . .	3	Hatter, . . . . .	1
Sail-makers, . . . . .	3	Gardener, . . . . .	1
Tanners, . . . . .	3	Idiots, . . . . .	8
Bakers, . . . . .	2	Vagrants, . . . . .	24
Stevedores, . . . . .	2	Few Females only are classified.	

TABLE 9.

*Diseases which have proved Fatal.*

Malaria, . . . . .	13	Disease of the brain, . . . . .	2
Epilepsy, . . . . .	10	Brain fever from intemperance, . . . . .	1
Consumption, . . . . .	7	Disease of the heart, . . . . .	1
Apoplexy, . . . . .	4	Disease of the bladder, . . . . .	1
Mortification of limbs, . . . . .	3	Lung fever, . . . . .	1
Suicide, . . . . .	3	Dropsy, . . . . .	1
Cholera Morbus, . . . . .	2		
Hemorrhage, . . . . .	2	Total, . . . . .	53
Inflammation of the bowels, . . . . .	2		

TABLE 10.

*Duration of Insanity before admitted to the Hospital.*

	1833.	1834.	1835.	1836.	1837.	1838.	Total.
Less than 1 year, . . . . .	48	56	49	54	73	82	*362
From 1 to 5 years, . . . . .	20	29	37	37	58	50	231
5 to 10, . . . . .	27	14	17	13	15	16	102
10 to 20, . . . . .	31	8	6	11	15	8	79
20 to 30, . . . . .	12	4	1	2	4	7	30
30 to 40, . . . . .	3	1	1	2	1	1	9
Unknown, . . . . .	12	6	7	6	5	13	49
Duration of Insanity with those remain-							
ing at the end of each year :							
Less than 1 year, . . . . .	29	22	21	11	29	28	140
From 1 to 5 years, . . . . .	20	25	22	39	51	65	222
5 to 10, . . . . .	20	24	34	35	38	44	195
10 to 20, . . . . .	30	24	29	35	41	41	200
20 to 30, . . . . .	9	5	3	7	11	18	51
Over 30, . . . . .	3	2	4	2	2	3	16
Unknown, . . . . .	8	16	6	9	18	19	71
Ages of Patients when admitted :							
Under 20, . . . . .	2	6	3	11	13	17	52
Between 20 and 30, . . . . .	34	23	22	29	58	47	213
30 and 40, . . . . .	48	44	42	30	34	51	249
40 and 50, . . . . .	34	28	30	25	31	32	180
50 and 60, . . . . .	14	9	11	16	13	20	83
60 and 70, . . . . .	17	6	6	10	12	8	59
70 and 80, . . . . .	5	2	5	0	7	2	21
Civil state of Patients admitted :							
Single, . . . . .	92	71	52	68	94	101	478
Married, . . . . .	38	40	46	49	61	65	295
Widows, . . . . .	12	4	8	6	11	5	46
Widowers, . . . . .	11	4	7	2	2	6	32

\* See Explanation of 12th Table.



TABLE 11.

*Causes of Insanity, &c.*

Intemperance, . . . . .	158	Hereditary, or having in- sane ancestors or near kindred, . . . . .	207
Males, . . . . .	138	Periodical, . . . . .	152
Females, . . . . .	20—158	Homicidal, . . . . .	16
Ill Health, . . . . .	110	Actual homicides, . . . . .	12
Epilepsy, . . . . .	32	Suicidal, or having a strong propensity to self-de- struction, . . . . .	96
Puerperal, . . . . .	22	Actual suicides, . . . . .	3
Religious, . . . . .	70	Of 420 cases that have been examined—have dark hair, eyes and complex- ions, . . . . .	220
Masturbation, . . . . .	81	Light hair, eyes and com- plexions, . . . . .	209
Domestic Afflictions, . . . . .	75	Of 152 periodical cases, 94 are caused by Intemperance, . . . . .	94
Loss of property and fear of poverty, . . . . .	53		
Disappointed affection, . . . . .	38		
Disappointed ambition, . . . . .	23		
Injuries of the head, . . . . .	10		
Abuse of snuff and tobacco, . . . . .	5		

Many unknown.

TABLE 12.

*Shewing the comparative Curability of Insanity treated at different periods of disease.*

	Total of Cases.	Of each Sex.	Cured or Curable.	Incumbent.
Less than 1 year's duration,	334			
Males, . . . . .		183	160	23
Females, . . . . .		151	134	17
From 1 to 2 years, . . . .	118			
Males, . . . . .		61	37	24
Females, . . . . .		57	42	15
From 2 to 5 years, . . . .	141			
Males, . . . . .		80	23	57
Females, . . . . .		61	22	39
From 5 to 10 years, . . . .	96			
Males, . . . . .		50	7	43
Females, . . . . .		46	5	41
From 10 to 15 years, . . . .	64			
Males, . . . . .		40	2	38
Females, . . . . .		24	1	23
From 15 to 20 years, . . . .	26			
Males, . . . . .		18	1	17
Females, . . . . .		8	0	8
From 20 to 25 years, . . . .	18			
Males, . . . . .		10	0	10
Females, . . . . .		8	0	8
From 25 to 30 years, . . . .	6			
Males, . . . . .		5	0	5
Females, . . . . .		1	0	1
Over 30 years, . . . . .	2			
Males, . . . . .		1	0	1
Females, . . . . .		1	0	1

TABLE 13.

*Shewing the per cent. of Cases from the most prominent Causes of Insanity admitted each year.*

	1833.	1834.	1835.	1836.	1837.	1838.
Intemperance, . . .	24½	24	22½	14½	10½	16½
Ill Health, . . .	8½	17½	21½	22½	21½	28
The Affections, . . .	13½	11½	17½	16	16	14½
Concerning Property, . .	6½	10½	8½	5½	6½	10½
Religious of all kinds, . .	8½	6½	6½	7½	6½	9
Masturbation, . . .	5	5½	7½	16½	21½	5½

From Intemperance, the average for the first 3 years was 24 per cent.

For the last 3 years, nearly 14 per cent.

For the six years, about 19 per cent.

TABLE 14.

*Comparative Curability of cases of Insanity attacking at different Ages.*

	Total of Cases.	Total of each Sex.	Cured or Curable.	Incurable.
Under 20 years,	109			
Males, . . . . .		61	19	42
Females, . . . . .		48	30	18
From 20 to 25,	121			
Males, . . . . .		70	33	37
Females, . . . . .		51	29	22
From 25 to 30,	119			
Males, . . . . .		65	33	32
Females, . . . . .		54	29	25
From 30 to 35,	118			
Males, . . . . .		76	34	42
Females, . . . . .		42	26	16
From 35 to 40,	102			
Males, . . . . .		46	24	22
Females, . . . . .		56	28	28
From 40 to 45,	64			
Males, . . . . .		36	22	14
Females, . . . . .		28	21	7
From 45 to 50,	55			
Males, . . . . .		29	22	7
Females, . . . . .		26	23	3
From 50 to 55,	50			
Males, . . . . .		24	14	10
Females, . . . . .		26	16	10
From 55 to 60,	27			
Males, . . . . .		13	10	3
Females, . . . . .		14	8	6
From 60 to 65,	16			
Males, . . . . .		9	9	0
Females, . . . . .		7	6	1
From 65 to 70,	15			
Males, . . . . .		11	7	4
Females, . . . . .		4	3	1
From 70 to 75,	4			
Males, . . . . .		3	2	1
Females, . . . . .		1	1	0
Over 75,	3			
Males, . . . . .		1	1	0
Females, . . . . .		2	0	2

TABLE 15.

*Shewing the relation of the paroxysms of excitement in from 50 to 60 cases of periodical Insanity, amounting to 425 distinctly marked, to the state of the moon on the day of their occurrence. Also to the 53 deaths that have occurred in the Hospital.*

Number of Paroxysms each day.					Number of Deaths on each day.				
Day of the Moon.	Total.	Male.	Female.	First Quarter.	Day of the Moon.	Total.	Male.	Female.	First Quarter.
1	9	4	5	1	1	1	1	0	1
2	27	15	12	2	2	5	3	2	2
3	16	11	5	3	3	4	1	3	3
4	18	9	9	4	4	3	2	1	4
5	12	7	5	5	5	2	1	1	5
6	17	9	8	6	6	1	1	0	6
7	20	8	12	7	7	2	0	2	7
End of First Quarter.				Second Quarter.	End of First Quarter.				Second Quarter.
8	24	12	12	1	8	1	1	0	1
9	18	10	8	2	9	2	1	1	2
10	9	3	6	3	10	1	1	0	3
11	14	8	6	4	11	0	0	0	4
12	18	9	9	5	12	1	1	0	5
13	14	9	5	6	13	5	3	2	6
14	15	8	7	7	14	1	1	0	7
End of Second Quarter.				Third Quarter.	End of Second Quarter.				Third Quarter.
15	16	8	8	1	15	1	1	0	1
16	12	7	5	2	16	3	3	0	2
17	20	11	9	3	17	1	0	1	3
18	12	6	6	4	18	0	0	0	4
19	10	6	4	5	19	1	0	1	5
20	15	11	4	6	20	4	3	1	6
21	16	9	7	7	21	5	4	1	7
End of Third Quarter.				Fourth Quarter.	End of Third Quarter.				Fourth Quarter.
22	16	10	6	1	22	1	1	0	1
23	18	6	12	2	23	0	0	0	2
24	21	13	8	3	24	2	1	1	3
25	15	6	9	4	25	4	2	2	4
26	17	8	9	5	26	1	1	0	5
27	5	1	4	6	27	0	0	0	6
28	8	5	3	7	28	1	1	0	7
End of Fourth Quarter.					End of Fourth Quarter.	53	34	19	

TABLE 16.

*Shewing the relation between Cause and Recovery.*

	Whole Number.	No. of each Sex.	Cured or Curable.	Incurable.
Intemperance, . . . .	158			
Males, . . . .		138	72	66
Females, . . . .		20	9	11
Domestic Afflictions of various kinds, Domestic Broils. Ill-requited Love. Anxiety about Property, &c. .	193			
Males, . . . .		82	49	33
Females, . . . .		111	63	48
Ill Health, including Puerperal cases, Wounds, Amenorrhœa, &c. .	155			
Males, . . . .		38	19	19
Females, . . . .		117	78	39
Religious of all kinds, . . .	70			
Males, . . . .		38	22	16
Females, . . . .		32	17	15
Masturbation, . . . .	81			
Males, . . . .		69	14	55
Females, . . . .		12	1	11
Epileptics, . . . .	30			
Males, . . . .		27	4	23
Females, . . . .		3	0	3
Palsy, . . . .	15			
Males, . . . .		13	2	11
Females, . . . .		2	0	2

TABLE 17.  
*Of Per Cent.—Recoveries.*

		1834.	1835.	1836.	1837.	1838.
Per cent. of cases DISCHARGED recovered of duration less than one year, . . . . .	85	82	82½	84½	89½	86½
Per cent. of recoveries of all discharged, . . . . .	53	53½	46½	53½	57	52½
Per cent. of recoveries of old cases disch'd, . . . . .	19	20½	15½	18½	25½	15½

There have been ADMITTED, since the Hospital was opened, 334 cases, of duration less than one year. There have been discharged, recovered, of recent cases, in the same time, 276, which is 82½ per cent.

Deduct from 334, 28 recent cases, mostly convalescing, now in the Hospital, and there remains 306, of which 276 is 90½ per cent.

Deduct from 306, the number above specified, 12, which is the number of deaths of recent cases, and there remains 294, which is 93½ per cent.

There have been 855 cases in the Hospital, and 344 recoveries, which is 40½ per cent.

*Deaths.*

	1834.	1835.	1836.	1837.	1838.
Per cent. of deaths of all the patients in the Hospital each year, . . . . .	3½	3½	3½	3	4½

Per cent. of the whole number in the Hospital, (53 of 855) 6 1-6 per cent.

Cases old and recent, (190 of 218.)

There are, at present, in the Hospital, cases of more than one year's duration 190, which is 87½ per cent.

Of less duration than one year 28 cases, which is 12½ per cent.

There have been Foreigners in the Hospital, since its commencement, 123, (of 855) which is 14½ per cent.

Recovery of Insanity from certain causes:

From Intemperance, . . . . .	51½ per cent.
Domestic Afflictions, . . . . .	58 per cent.
Ill Health, . . . . .	62½ per cent.
Religious causes, . . . . .	55½ per cent.
Masturbation, . . . . .	18½ per cent.

Hereditary, (267 of 855) . . . . .	31½ per cent.
Periodical, (152 of 855) . . . . .	18 per cent.

Of the Periodical cases, 96 were from Intemperance, (96 of 152) 63 pr. cent.

Of 840 patients whose civil state was known, there were

Single 555, which is . . . . .	66 per cent.
Married 295, which is . . . . .	34 per cent.





Presenting our Sixth Annual Report, at the close of another year, we feel that we have great cause of gratitude to the Author of all good, that we have been so greatly blessed with health and security, and that its former prosperity has still attended this institution.

During the residence of nearly six years, we have been exempt from severe sickness, and no epidemic has ever visited the Hospital. In this period, we have had under our care *eight hundred and fifty-five* patients, exhibiting insanity in all its forms, from the high excitement which induces its victim to discard and destroy his raiment and expose himself to injuries in a manner wholly reckless of consequences, to that state of imbecility and torpor, which unfits him from attending to what is absolutely necessary to his existence, much more to his security and comfort; yet we have never, in a single instance, had a patient either *burned, scalded, or frozen*.

This exemption from physical suffering, to which the insane, when at large or in confinement with their friends, are particularly liable, arises, to a great extent, from the excellent arrangements for warmth and ventilation which have been adopted, and to which we may further allude in the progress of the report.

TABLE 1. By a reference to the table it will be perceived that, in the course of the last year, we have admitted *one hundred and seventy-seven* patients, a greater number than has heretofore been admitted in any single year. Of these, *ninety-six* were males and *eighty-one* were females; *eighty-two* were of less duration than one year, *forty-five* males and *thirty-seven* females, and *ninety-five* of longer duration than one year, *fifty-one* males and *forty-four* females.

There have been sent to the Hospital by the different Courts, *one hundred and twenty-three* patients deemed furiously mad and dangerous to go at large, and *fifty-four* have been admitted as private boarders. Many rooms, during the early part of the year, not being occupied by those sent by the courts, this unusually large number of private boarders were, in the course of the year, accommodated. At the present time we are hardly able to admit any of the latter class.

At the close of the year there were in the Hospital, *two hundred and eighteen* patients of whom *one hundred and fifteen* were males and *one hundred and three* were females. Of this number of cases *twenty-eight* are of duration less than one year, and *one hundred and ninety* of duration longer than one year.

During the year there have been in the Hospital, *three hundred and sixty-two* patients, *one hundred and seventy-seven* of whom were ad-

mitted in the course of the year, and *one hundred and eighty-five* were in the Hospital at the commencement of the year.

TABLE 2. There have been discharged during the year, including deaths, *one hundred and forty-four* patients, of whom *eighty-four* were males and *sixty* were females. *Seventy-six* of these recovered, *forty-five* males and *thirty-one* females; *twenty-four* were improved, *eleven* males and *thirteen* females; *fourteen* were not improved, *eight* males and *six* females; *fourteen* were discharged harmless and incurable, for want of room, *ten* males and *four* females; and *sixteen* have died, *ten* males and *six* females.

Of this number of cases discharged, *seventy-four* were of less duration than *one* year, *forty-seven* males and *twenty-seven* females. Of these *sixty-four* recovered, *thirty-eight* males and *twenty-six* females; *six* were discharged improved, *two* males and *four* females; *four* have died, *three* males and *one* female.

Of the number of cases discharged, *seventy* were of duration longer than *one* year. Of these *forty-two* were males and *twenty-eight* were females; *twelve* recovered, *seven* males and *five* females; *eighteen* were discharged improved, *ten* males and *eight* females; and *twelve* died, *seven* males and *five* females.

Of the patients remaining at the end of the year, *one hundred and eighty-eight* are natives of this State, *ten* are natives of other States, and *twenty* are foreigners.

In the course of the year there have been in the Hospital, *three hundred and seventeen* persons belonging to the State, and *forty-five* natives of other states or foreigners.

These two tables furnish the principal statistics for the year.

The number of deaths the past year has been larger than in any former year, and yet we have never had a more healthy season. The *first* death that occurred was from mortified feet, the effect of frost. This man was at the point of death when he arrived at the Hospital, and survived but a few hours. *Five* others were affected with fatal disease when they entered the Hospital, and survived but a few weeks; one died in *eight* days.

Four epileptics, not included in the above list, have died suddenly without apparent previous indisposition except what had existed for a long time, showing no disposition to a fatal tendency till the fatal symptoms occurred.

In this institution, having no power to exclude patients sent by the courts, we shall always be liable to receive unfavorable cases, and, of course, to have a large list of deaths. Thus far, however, we must be

considered fortunate, having had but *fifty-three* deaths of *eight hundred and fifty-five* cases, which is about *six and one-fourth* per cent. quite below the common average in hospitals of this character.

TABLE 3. From this table we learn the number of old cases remaining under our care compared with those of recent origin. *Twenty-eight* only are of less duration than *one* year, while *sixty-five* have been of from *one* to *five* years' duration; *forty-four* from *five* to *ten* years, and nearly three times the number over ten years. The proportion, as before stated, is as *twenty-eight* to *one hundred and ninety*.

Respecting the ages of patients now in the Hospital, it will be seen, that, of any *ten* years, the greatest number of patients are between *thirty* and *forty* years of age, few are under *twenty*, and more are between the ages of *forty* and *fifty* than between *twenty* and *thirty*. This, it is believed, is different from the fact with most hospitals for the insane, and may be accounted for, in part, from the accumulation of old cases in this Hospital, which was originally designed principally for incurables, many of whom will continue within its wards while life remains.

The institution commenced this year with *one hundred and eighty-five* patients, and closed with *two hundred and eighteen*; showing an increase of *thirty-three* patients in the course of the year, although *one hundred and forty-four* have been discharged.

The average number for the year 1837 was *one hundred and sixty-three*; the average number for the year 1838 is *two hundred and eleven*, a difference of *fifty-five* in the average of the *two* years.

At this time the Hospital is as full of patients as it is desirable that it should ever be, and without the lodges, which should never be estimated as a part of the accommodations of the establishment, is already more than full.

TABLE 4. It will be seen by this table that *three hundred and twenty-one* patients were received and discharged in the course of the year, showing a change of more than an average of one patient daily for the weekdays of the year. In the last two months of spring and the first two months of summer, there were received and discharged *one hundred and forty* patients in *one hundred and twenty-two* days, sabbaths included.

The average for the month of July was greater than that for any other month, being *two hundred and twenty and one-fourth*, and that of November the next greatest, being *two hundred and eighteen and one-half*.

Such an exchange of patients as this table exhibits, tends greatly to

keep the house disturbed. Those who leave are quiet, either recovered, greatly improved or harmless, while those who are admitted are violent and noisy; notwithstanding this, however, the Hospital is proverbially a quiet and peaceful residence to a large proportion of its inmates.

TABLE 5. From this table almost every statistical fact connected with our history as an institution, can be obtained. The whole number of admissions, and the number each year, the total number of discharges and the number discharged each year, the number that have remained at the end of each year, the number of deaths and elopements, the number that have been in the institution in the course of each year, the number of recoveries and of those that have been discharged improved. This table shows the manner in which the Hospital has been filled up and the regular increase of the average number of every succeeding year, also the proportion of the sexes in the cases admitted, discharged, recovered and dead.

TABLE 6. From this table we learn the number of patients admitted, discharged, recovered and died at the different seasons of the year.

There have been admitted in the winter months, *one hundred and seventy-two* patients, which is a trifle more than *twenty* per cent. of the whole.

In the spring months there have been admitted *two hundred and sixty-eight* patients, which is more than *thirty* per cent. of the whole.

There have been admitted in the summer months, *two hundred and ten*, which is more than *twenty-four and a half* per cent. of the whole.

In the autumnal months there have been admitted *two hundred and two*, which is less than *twenty-four* per cent.

The discharges in winter have been *eighty-six*, which is less than *fifteen* per cent. The discharges in spring have been *one hundred and seventy-eight*, which is more than *thirty* per cent. The discharges in summer have been *one hundred and sixty-six*, which is more than *twenty-eight and a half* per cent. The discharges in autumn have been *one hundred and sixty-one*, which is more than *twenty-seven* per cent.

In winter the recoveries have been *sixty-two*, which is more than *eighteen* per cent. of the whole number of recoveries. The recoveries in spring have been *eighty-seven*, which is about *twenty-five and a half* per cent. The recoveries in summer have been *eighty-six*, which is about *twenty-five and one-fourth* per cent. The recoveries in autumn have been *one hundred and ten*, which is very nearly *thirty-two* per cent.

The deaths in winter have been *eight*, which is a trifle more than *fifteen* per cent. of the whole number of deaths. The deaths in spring have been *fourteen*, which is about *twenty-six and one-fourth* per cent. The deaths in summer have been *seventeen*, which is about *thirty-two* per cent. The deaths in autumn have been *fourteen*, which is *twenty-six and one-fourth* per cent.

It appears from this table that the admissions, discharges, recoveries and deaths have been least in the winter months. The number of admissions and discharges have been greatest in spring, while autumn affords the greatest number of recoveries, and summer the greatest number of deaths.

These facts may be too few to afford any criterion for correct conclusions, but are preserved as valuable for future use.

TABLE 7. From this table may be learned the number of cases of different kinds of insanity that have been in the Hospital. The symptoms of mania and melancholy as exhibited in strongly marked cases of either form of disease are very distinct and easily recognised, but as they are less prominent they become less obvious till it is difficult, indeed quite impossible to classify them distinctly. In forming this table I have endeavored to observe the usual rule of distinction. Such classification is of little or no practical utility, and is only useful as showing the prevalence of high excitement or depression on the mind and feelings in the cases. The same is true of the cases of melancholia and mania on the one hand, and dementia on the other; many patients belonging to the first two classes seem at first, or in the progress of the disease, to be considerably demented, but if these symptoms are soon removed, they will be found arranged in the other classes as not strictly belonging to the class dementia. We classify as idiots, those only who are so from birth, of course the number is quite small. A few are not classified.

The recoveries of mania are about *sixty* per cent., and the recoveries of melancholia about *fifty-nine* per cent., while recoveries of dementia, as we use the term, are from *two to three* per cent. only.

This table also shows the influence which the large number of cases of dementia has upon the per cent. of recoveries in the Hospital. Without it the average would be about *sixty* per cent. of the discharged, and probably nearly *fifty* per cent. of the whole that have been admitted.

TABLE 8. From this table we learn that the farmers are still the most

numerous among the male inmates of the Hospital, and that laborers are the next most numerous class. Great as is this list of farmers, it probably falls short of the proportion which this employment holds to the many trades enumerated in this table. There is unquestionably, in the community, more than *three* farmers to *one* shoemaker, and more than *four* to *one* merchant, or *five* to *one* carpenter; it cannot therefore be inferred that the employment of cultivating the land tends to produce insanity; probably no business which is pursued by our citizens, has less tendency to it, and no set of men in their legitimate employment can be more exempt from the causes of disease, mental or physical. Hereditary predisposition and the influence of causes which disturb the nervous system independent of employment, such as intemperance, speculation and domestic affliction, probably bring a large proportion of this respectable class of men into institutions for the insane.

The great list of employments in the table show conclusively that all mankind, of whatever pursuits, are liable to the evil, and that little can be said of the occupation as a cause of the insanity in any case.

TABLE 9 has reference to the number and causes of the deaths that have occurred in the Hospital. We have, as remarked at the commencement of this report, been unusually exempt from acute diseases and entirely so from epidemic febrile disease. Marasmus still stands at the head of the list of deaths as to numbers; a large proportion of the subjects of it come under our care with the disease upon them, or with symptoms which run directly into it, and prove fatal in a short time. Two individuals were brought into the Hospital this season, who were able to leave the bed for a short time only, both of whom went steadily down to death with a rapidity not a little accelerated by the influence of insanity.

Next to Marasmus, on our list, stands Epilepsy; a disease to which the insane are particularly inclined. Four deaths from this disease have taken place during the last year. All but one sudden and unexpected at the time; in two of the subjects the symptoms of insanity were subsiding in the most favorable manner.

Consumption is generally the most fatal disease in hospitals for the insane, and in our records stands high among the causes of death. A considerable proportion of those who have died of consumption have come into the institution with symptoms of disease upon them. The little regard which the insane have to prudence and care respecting health, and the frequency of their exposures and privations ren-

ders them particularly liable to a class of diseases in no way connected with insanity.

In the course of this year, two patients have died of mortification of the limbs, one arising from frost, who survived his admission but two days. The other from *land scurvy*, who lingered two or three weeks before he expired; another case of frost-bitten limbs survived, after great suffering and the loss of many of his toes; and we have recently admitted a patient whose feet are frozen in a most shocking manner, and who, if he survives the severe wounds that now threaten his life, will, in future, be a cripple.

These cases are mentioned to show, that, as regards fatality, an institution of the character of this Hospital will always be liable to receive such cases of insanity complicated with other diseases as will swell its catalogue of deaths, and increase its per cent. of fatality above that of hospitals which have power to reject unfavorable cases.

TABLE 10. The number of cases admitted into the Hospital of less duration than one year has been, as appears by the table, *three hundred and sixty-two*, which is about *two-fifths* of all that have been in the institution. With the exception of one year, the number of this recent class of cases remaining at the end of the year has varied from *twenty-one* to *twenty-nine*; most of these, in each year, had been recently admitted and were generally more or less improved. At the close of the present year, there were *twenty-eight* cases of duration less than *one* year; *sixty-eight* from *one* to *five* years; *forty-five* from *five* to *ten* years; *forty-one* from *ten* to *twenty* years; *eighteen* from *twenty* to *thirty* years; *three* over *thirty* years, and *nineteen* of which the duration was unknown,—showing a great accumulation of very old cases. There are probably more cases over *twenty* years' duration than of less than one year.

This table shows that the number of single persons continues to be much larger than the married, as has always been the case in the Hospital. During the last year, we have received *one hundred and one* patients that have never been married, *sixty-five* married, and *eleven* in a state of widowhood.

TABLE 11. The records of this table,—the causes, hereditary taint, periodicity, homicidal, and suicidal propensities,—are subjects of great interest, and are sufficient of themselves to fill the report.

Intemperance continues to be a prominent cause, but we are happy to think it is less frequent than formerly. It will elsewhere be recorded that this cause, during the first three years of the Hospital, gave origin to *twenty-five* per cent. of the cases of insanity admitted, while it

it is supposed to be the cause in but *fourteen* per cent. of the cases admitted the last three years. If this is any indication of the proportionate diminution of its influence in other respects, unfavorable to public health and public morals, the prospect is most cheering. We have had no case of delirium tremens for the last year, and very few since the institution was opened.

Of the *one hundred and fifty-two* cases of periodical insanity that have been in the Hospital, *ninety-four* have arisen from intemperance, nearly *two-thirds* of the whole. This has reference not only to those cases in which a renewal of the cause produces a return of the disease, but to that state of periodicity which occurs at short intervals, and at regular periods, the subjects of which, remaining in confinement, have no access to these means of excitement during the intervals of the paroxysms.

It has occurred to me, that the brain and its appendages, its nerves and blood-vessels, under the influence of the high stimulation of alcohol, and the corresponding torpor when that influence is not felt and its effect has subsided, may have a tendency, after a long time, to induce a habit of disease which does not yield with the removal of the cause. This may be true of other causes of this form of insanity as well as intemperance. It is peculiarly liable to take place in females at the period of the menses, and continue independent of this cause as well as the other.

In all cases of periodical insanity in which the paroxysms occur at short intervals of one or a few months, what is called the lucid interval is a period of more or less gloom and depression; in proportion to the degree of severity which either of these opposite conditions present is the corresponding one of excitement and collapse.

If intemperance, besides producing ordinary insanity and delirium tremens, does in fact induce such a state of the brain as to establish periodical insanity, the very worst form of all diseases affecting the mind, the whole catalogue of disastrous effects from it have not yet been known, and it may have in this way produced suffering as intense as any other calamity which has arisen from its noxious influence.

During the last year, a case of most appalling homicidal insanity, produced by intemperance, has been added to our large list of cases of this unfortunate class, swelling it now to *twelve* actual homicides, and *sixteen* who have made assaults with intent to kill, *four* of which have fortunately proved unsuccessful.

A large proportion of the cases of homicidal insanity have been produced by intemperance; and other individuals not strictly intemperate



seem to have been thrown by alcoholic drink into a state of temporary excitement, or such utter confusion of mind, as to make them quite unconscious of the influences which prompted to the fatal deed, or it has excited in their minds false and delusive impressions of duty which, though temporary, existed long enough to deprive a fellow-being of life, his family of a guide and protector, and the community of a valuable citizen.

The number of admissions from religious causes has been about the same as usual the past year. A subject so deeply interesting to the human mind as its eternal well being, must ever have an agency in the production of insanity; these cases come in bold relief before us, and we deprecate the influence which has produced them. All the most valuable institutions of society, however, are liable to the same objection,—marriage, education and civilization, as well as christianity, are the causes of insanity in many cases, though it is not the legitimate tendency of any of them to produce this effect.

There is no good without some corresponding evil, and the best institutions of society can be perverted so as, in individual cases, to produce mischievous effects.

Under the influence of many causes of disease affecting the mind, consolations of religion afford the best security and are the most effectual preventive. In a thousand cases religion interposes its soothing influences and confident hopes to secure the mind from distraction amid the evils of life, and thus doubtless prevents, more frequently than it causes, insanity. Without it, where would the agitated mind seek rest, or the perturbed feelings find repose?

The number of admissions from masturbation, the last year, have been less, and the cases of a more favorable character. *Six* cases only are known to have arisen from this cause; but probably *three* or *four* others may have done so. *Four* or *five* of these cases have recovered, and have been discharged with such feelings of the nature and tendency of the practice, as it may confidently be hoped, will ensure them from future indulgence and its consequences.

If, from this reduced number of cases from this debasing cause, we could indulge hope that the evil had diminished with the young, and that, as light is diffused upon the subject, the habit had become less common, it should encourage to perseverance in all the means which prudence and delicacy will admit, to exterminate a cause of insanity most fruitful in the destruction of every quality of mind and feeling which distinguishes man from animals of inferior creation.

The number of cases denominated hereditary, is very large on our table ; for facts on this subject we rely wholly on information derived from friends. If near collateral relatives are or have been insane, we call the case hereditary, wishing to be understood that the family have a propensity to the disease.

The influence of hereditary pre-disposition is rarely, perhaps never, sufficient to produce insanity without the intervention of other causes ; but, with such causes, we believe that insanity is much more certainly induced in individuals having this pre-disposition. If the exciting causes of disease are avoided, the strongest pre-disposition need not result in insanity.

We record *sixteen* cases of homicidal insanity, and *twelve* actual homicides. We denominate no cases HOMICIDAL in which there has not been an actual attack made with previous determination to kill, or a certain rush with a dangerous weapon in such a way as to endanger the life of the individual assailed. A great many patients in the moments of passion and excitement threaten to kill and even prepare or secrete a weapon for the purpose. We have not called such cases *homicidal*,—if we did, our number would be four times greater than the records of the table.

One man discharged two pistols at his neighbor and friend, neither of which took effect, although they penetrated his clothes ; he then fired a ball into his own head, intending to destroy two lives at once. Three others made a desperate attack upon persons against whom their prejudices were excited with a dangerous weapon in hand, and inflicted severe wounds which fortunately did not prove fatal. These cases are recorded homicidal, and no others, except those whose well-aimed efforts destroyed the victims of their rage.

As to suicidal insanity, we have been less limited in our record ; we denominate as suicidal not only those who actually attempt self-destruction, but also those who feel a strong desire to do it, or express great apprehensions that they shall be placed in a situation in which they cannot refrain from it, although they have the greatest horror of the deed, and alarming fears lest they should commit it.

The number of suicides has been small,—amounting to only *three* of nearly *nine hundred* insane, and of *one hundred* who were strongly predisposed to it.

TABLE 12. From this table, we learn some interesting facts on the subject of the comparative curability of insanity treated at early or late period of disease. There have been admitted into the hospital *three*

*hundred and thirty-four* cases of less duration than *one* year, of which there are recovered or supposed curable *two hundred and ninety-four*, which is *eighty-eight* per cent.

There will be found some variation in the number stated in this table and table 15th. This table is most accurate as it has been corrected from time to time as information has been received of the duration of the cases.

There have been admitted *one hundred and eighteen* cases of from *one* to *two* years' duration, of which *seventy-nine* have recovered or are supposed curable, which is a fraction more than *sixty-six* per cent.

There have been admitted *one hundred and forty-one* cases of from *two* to *five* years' duration, of which *forty-five* are recovered or supposed curable, which is a little less than *thirty-six* per cent.

There have been admitted *ninety-six* cases from *five* to *ten* years' duration, of which *twelve* have recovered or are supposed curable, which is *twelve and a half* per cent.

There have been *one hundred and eighteen* cases over *ten* years' duration, of which *four* have recovered, which is less than *three and a half* per cent.

These facts show most clearly the importance of placing patients under suitable care in early periods of disease, when the prospect of recovery is so favorable as is represented by the table.

**TABLe 13.** At the commencement of the institution, in 1833, a large proportion of the cases came from the public receptacles where they had been accumulating for years. There were many vagrants, the cause of whose insanity was intemperance, so as to make about *one-fourth* of the whole, to wit, *twenty-four and three-fourths* per cent. of the admissions from that cause. Since that time the proportion has been regularly diminishing till the present year. In 1837 the proportion was only *ten and one-eighth* per cent., the last year it again increased to *sixteen and three-fourths* per cent., a proportion considerably greater than the *two* preceding years.

The regular increase of admissions from ill health probably arises from the fact that the Hospital has gained some reputation as a curative institution, and the friends of patients have felt increased solicitude to obtain the advantage of medical treatment here afforded. A large proportion of the private boarders are of this class of patients. During the past year this class has been unusually numerous, and the per cent. from the various causes of ill health is *twenty-eight*.

The cases from the various affections concerning property, and from religious causes have not varied much from year to year.

TABLE 14. From this table we learn the comparative curability of cases attacking at different ages.

The result of these observations differ very little from the last year. There have been admitted *one hundred and nine* cases in which insanity commenced under *twenty* years of age, of these *forty-nine* recovered or are curable, which is nearly *forty-six* per cent. ; last year the recoveries of this class were about *forty-nine* per cent.

There have been admitted *one hundred and twenty-one* patients in whom insanity commenced between the ages of *twenty* and *twenty-five*, of whom *sixty-two* recovered, which is *fifty-one and one-third* per cent.

There have been admitted *one hundred and nineteen* patients in whom insanity commenced between the ages of *twenty-five* and *thirty*, of whom *sixty-two* recovered, which is about *fifty-two* per cent. Last year the average on these two classes was about *forty-eight* per cent.

There have been admitted *one hundred and eighteen* patients in whom insanity commenced between the ages of *thirty* and *thirty-five* of whom *sixty* recovered which is about *fifty-one* per cent.

There have been admitted *one hundred and two* patients in whom insanity commenced between the ages of *thirty-five* and *forty*, of whom *fifty-two* recovered, which is about *fifty-one* per cent.

There have been admitted *sixty-four* patients in whom insanity commenced between the ages of *forty* and *forty-five*, of whom *forty-three* recovered, which is about *sixty-seven* per cent.

There have been admitted *fifty-five* patients in whom insanity commenced between the ages of *fifty* and *fifty-five*, of whom *thirty* recovered, which is *sixty* per cent.

There have been admitted *twenty-seven* patients in whom insanity commenced between the ages of *fifty-five* and *sixty*, of whom *eighteen* recovered, which is *sixty-six* per cent.

There have been admitted *sixteen* patients in whom insanity commenced between the ages of *sixty* and *sixty-five*, of whom *fifteen* recovered, which is nearly *ninety* per cent.

There have been admitted *fifteen* patients in whom insanity commenced between the ages of *sixty-five* and *seventy*, of whom *ten* recovered, which is about *sixty-seven* per cent.

There have been admitted *seven* patients whose insanity commenced

after the age of *seventy*, of whom *four* recovered, which is *fifty-seven* per cent.

TABLE 15. Having last year made a table in which was noted the day of the moon on which *three hundred and fifty* paroxysms of excitement commenced, I now add the experience of the last year in an additional number of *seventy-five* paroxysms, making in the whole *four hundred and twenty-five* paroxysms. The greatest number of paroxysms, as will be seen in the table, occurred on the *second* day of the *first* quarter, which was *twenty-seven*; this was also the case the year before, the number then being *twenty-two*.

This year the next greatest number will be found on the *first* day of the *second* quarter, which was *twenty-four*. Before the addition of those of the last year the day previous had the *second* number.

On the *third* day of the *fourth* quarter there occurred *twenty-one* paroxysms which is the *third* number.

On the *last* day of the *first* quarter and the *third* day of the *third* quarter an equal number occurred which is *twenty*.

The results of the present year have varied the results of former years but little, of *four* days that had the highest number this year, *three* had the highest last; these *four* days have an aggregate of *ninety-two* paroxysms, while the *four* days on which the least number of paroxysms occurred have an aggregate of *thirty-one* paroxysms only. *Three* of the *four* days having the least number are the same as in the table last year, *one* is different.

The days of the moon on which occurred the least number of paroxysms, will be seen to be the *first* day of the *first* quarter, the *third* day of the *second* quarter, and the last *two* days of the *fourth* quarter. The extremes are *twenty-seven* and *five*.

With respect to the *fifty-three* deaths which have occurred in the Hospital, an equal number occurred on the *second* day of the *first* quarter, on the *sixth* day of the *second* quarter, and on the *last* day of the *third* quarter, which was *five*.

On the *third* day of the *first* quarter, on the *sixth* day of the *third* quarter, and on the *fourth* day of the *fourth* quarter, an equal number of deaths occurred, which was *four*.

On the *fourth* day of the *second* quarter, on the *fourth* day of the *third* quarter, and on the *second* and *sixth* days of the *fourth* quarter, no deaths occurred.

We have collected these facts with as much care as the nature of the subject will admit, time only can render them useful or

interesting as sustaining or overthrowing the popular opinion which, for centuries, has been prevalent with respect to the influence of the moon on the excitement of the insane. We have no theory to establish and, of course, can wait the results of long experience and careful observation without a desire to make any deductions from them at this time.

In about *thirty* cases of periodical insanity that have been in the Hospital, the periods have been regular every *four, six, eight* or *twelve* weeks. A majority occur at monthly periods, that is, a lucid interval one month, and an excitement the next, making about *six* paroxysms in a year; others have *four*, and others have *two* paroxysms annually. In some cases the paroxysm occurs *once* a year regularly, but if the period is longer than this, it is usually more irregular.

In *one* case belonging to the Hospital, regular paroxysms with regular lucid intervals have occurred, each about *six* in a year, for at least *twelve* successive years. Other cases have long been with us in which the paroxysms occur at nearly as regular periods.

*One* female is now in the Hospital who is greatly excited about *two-thirds* of the time, and is quiet and rational the remainder. These excitements occur at nearly regular periods.

There have been *two* cases in which every other day was a day of excitement and the alternate day quiet.

During the very warm weather of the last summer we had unusual excitements in the Hospital, and we have always found the winter more quiet than the summer months.

TABLE 16. Shows the proportionate recovery of cases of insanity produced by different causes.

The number of cases caused by intemperance has been *one hundred and fifty-eight*, of which *eighty-one* have recovered, or are curable, which is about *fifty-one* per cent.

The number of cases admitted, the cause of which are the various domestic afflictions, has been *one hundred and ninety-three*, of which *one hundred and twelve* have recovered, which is a little less than *sixty* per cent.

The number admitted arising from ill health, has been *one hundred and fifty-five*, of these *ninety-seven* recovered, which is more than *sixty-two* per cent.

The number of cases admitted arising from religious causes, has been *seventy*, of which *thirty-nine* recovered, which is more than *fifty-five* per cent.

The number of cases from masturbation has been *eighty-one*, of which *fifteen* have recovered, which is about *eighteen and a half* per cent.

On the subject of this last cause it is proper to remark that it is impossible to decide what cases arise from it, and in what cases it is the effect of disease; this, however, is certain, that it renders all incurable that do not abandon it.

TABLE 17. In this table I have brought together various interesting facts, and presented the per cent. of recoveries, deaths, &c.

We learn from it that, in cases of less duration than one year, insanity is a very curable disease, the recoveries of all that have been discharged being *eighty-five* per cent., varying from year to year, for the *six* years, from *eighty-two* per cent., annually, to *eighty-nine and a half* per cent.

The recoveries of all the cases discharged has been *fifty-three* per cent. on an average, varying from *forty-six and a half* to *fifty-seven* per cent.

The recoveries of cases of longer duration than *one* year has averaged *nineteen*, varying from *fifteen and a half* to *twenty-five and a half* per cent.

These calculations have been made on the discharged. The following are made on the admitted.

There have been admitted since the Hospital was opened, *three hundred and thirty-four* cases of less duration than one year, of which *two hundred and seventy-six* have recovered, which is about *eighty-two and two-thirds* per cent.

In most institutions, it is customary to deduct cases that have not had sufficient time; this may be said of the *twenty-eight* recent cases left in the Hospital at the end of the year; these deducted, the per cent. of recoveries will be *ninety and one half*.

If we make a further deduction of the deaths of the cases from this class, which is also the rule in many institutions, we should increase the per cent. to about *ninety-four*.

There have been in the institution *eight hundred and fifty-five* patients of all forms of insanity; of these, there have been discharged recovered *three hundred and forty-four*, which is *forty and one-fourth* per cent.

The various modes of reporting adopted by different institutions make it extremely difficult to ascertain with accuracy the comparative success of each. Some institutions make a recent case one of three

months' duration ; others make it six months, which I believe is the general rule adopted in this country. We have called a case recent, that is of less duration than one year

There is great propriety in deducting cases of insufficient trial, as the disposition of friends to remove patients when recovering is quite too common and very disadvantageous to the institution.

In the course of the last year, *six* private patients who had been insane less than a year, and who were in a state of most favorable improvement, were removed from the Hospital by their friends. Five of these afterwards returned by order of the courts ; one has been discharged recovered, and the others are now convalescing. Thus *six* individuals have been recorded as *eleven* cases on our records, making *six* cases improved when discharged and not cured, which materially diminishes the per cent. of cures, both on the discharged and the admitted. If these cases had not been discharged till recovered, we should have had *five* less admissions of recent cases the past year, to wit : *seventy-seven*, instead of *eighty-two*.

In this institution, we have some advantages over others ; we can retain patients committed by the courts when improving, till they are recovered, which private institutions cannot do. They can, however, reject them if presented for admission a second time, which we cannot do if sent to us by the authority of the courts, so that our advantage is in this way counterbalanced, and we have a great disadvantage as a curative institution in the number and condition of old demented cases that cannot be discharged.

Of the deaths that have occurred in the Hospital, *twelve* have been of recent cases, and *forty-one* of old cases. No one has died of fever, and *four* only of inflammatory disease.

The proportion of deaths must be considered small for the number of the imbecile, feeble and diseased that have annually been brought to our care, being only *fifty-three* of *eight hundred and fifty-five*, a little more than *six* per cent. ; the average on the number in the Hospital each year, is about *three and a half* per cent.

The proportion of old cases at the end of this year has been about the common average ; it is *eighty-seven and a half* per cent., and the recent cases of less duration than one year, *twelve and a half* per cent. The number remaining this year is *twenty-eight*. The average number of recent cases at the end of the year for six years, is *twenty-three and one-third*.



TABLE 18. Shows the comparative expense of supporting a recent case of insanity till recovered, and an old case which is hopeless and incurable. The price of support before admitted to the Hospital is, in both cases, fixed at a low rate, probably lower than the actual expense, but since admitted into the Hospital, it is fixed at the actual rate of charge paid for support.

The *twenty* old cases in the table are the first *twenty* cases admitted into the Hospital which still remain, and which are known to have been in confinement nearly the whole time.

The *twenty recent* cases recovered, are taken from the last records of recovery; the cases known to have existed not over three months, all of which have remained free from disease and able to labor, so far as is known, since their discharge.

These *twenty* old cases have cost their friends or the public, in the aggregate, *thirty-one thousand and fifteen* dollars,—an average of *fifteen hundred and fifty* dollars and a fraction, each. The subjects of them are still in confinement at the same rate of expense without a hope that it will be materially lessened. The number of this class of patients now under our care, is not less than *one hundred and ninety-five* who will always be a burthen upon their friends or the public. The annual expense of supporting these *one hundred and ninety-five* patients at *two dollars and fifty cents* per week, is *twenty-four thousand three hundred and fifty* dollars.

If we suppose that these patients on the average should continue to live *ten* years each, the expense of future support will be *two hundred and forty-three thousand five hundred* dollars, a sum sufficient to erect a hospital in every New England State sufficiently large for the accommodation of all cases of insanity of less duration than one year, which will be likely to occur for half a century. Allowing this estimate to be true, the sum which will be expended in the support of *twenty* old cases of insanity, will be *sixty-seven thousand and fifteen* dollars, or *three thousand three hundred and fifty* dollars for each individual.

If these *twenty* cases had been subjected to proper medical treatment in a Hospital, when recent, we may suppose, that at least *seventeen* of them would have recovered at an expense not exceeding the average cost of support of the *twenty* recent cases in the table, to wit: *forty-seven* dollars and *fifty cents*. There would then have been a saving of actual expense to the friends or the public of more than *fifty-seven thousand* dollars, a sum sufficient to erect and endow an institution for the support of *twenty* recent insane persons perpetually.

This is not all, the seventeen persons who should recover under proper treatment, would no longer be a burthen upon their friends and useless in society, but would contribute their share to public and private wealth, domestic comfort, and the pleasures of rational life.

The *twenty* recent cases of insanity in the table had been affected, on an average, *six and a half* weeks before admission to the Hospital, and continued in the Hospital *twelve and a half* weeks. Most of these cases, however, were convalescing at least half this time, and were quite rational and free from disease from *two to four* weeks before they left. This does not affect the *price of support*, but will diminish the *period of insanity* on an average from *nineteen* weeks to nearly *sixteen* weeks.

The comfort and happiness of at least *ten* individuals is more or less disturbed by every insane person that is abroad in the community. Of the *twenty* old cases in the table, *six* are homicidal, having inflicted wounds of which *four* were immediately fatal. Thus, to the common disturbance and anxiety of friends occasioned by the insane, is added the deep and irreparable loss of valuable members of families, sacrificed to their rage and delusions, all of which might have been prevented by the timely application of the appropriate means of recovery !

I have now gone through the explanation of the tables, in a manner to render them intelligible to all who may wish to examine them for information. Much has been said in them of the per cent. of recovery and improvement, and the number and condition of the patients admitted ; but there is one benefit derived from the Hospital which cannot be estimated in figures or presented in tables of per cent., which is equal to any other that can be contemplated or named. I refer to the improvement in the condition and comfort of the great number of hopeless and incurable insane that have come into its wards, for the amelioration of whose state, and the preservation of the community from danger, the institution was principally designed.

In the abstract of our records at the commencement of this report the term " not improved," is often used. This relates to insanity alone, for in every other respect the condition of a large proportion of the inmates of the Hospital is greatly improved. The furious and violent have become quiet and docile ; the filthy and degraded have become cleanly and respectful ; and the circumstances in which they are now situated, contrasted with the condition of suffering and wretchedness in which they formerly were, will be found to exhibit great improvement and decided benefit.

While this paragraph is being written, with every room in this large establishment occupied, amounting in numbers to more than *two hundred and thirty* patients, but *one* individual, either man or woman, in our wards has upon his or her person any restraint whatever; five only are in strong rooms in consequence of violence; the remainder of the strong rooms are occupied by imbeciles and idiots, because we have no other place for them to occupy.

Of this number of insane persons, a very great proportion of whom were sent into the Hospital "furiously mad and dangerous to go at large," *two hundred and twenty* at least sit at the table at their meals, use knives, forks and crockery like other boarders, and generally conduct themselves with decorum and propriety. At night, each has his bed, consisting of a good hair mattress, a straw bed, pillow of hair or feathers, and covering of blankets, comforters and quilts, a bedstead, &c., as comfortable in all respects as lodgers in a private family generally are. It is rare that these privileges are abused; no injury has ever been done with knives and forks, comparatively little crockery has been broken, and the beds have been preserved neat and comfortable, with very few exceptions.

Many of these individuals engage in labor and unite in amusements, thus occupying their time profitably and pleasantly, so that few manifest any particular solicitude to leave or make any effort to escape.

During the past year we have relaxed the rigor of confinement, and, in a great number of cases, suffered our patients to go into the garden or workshops to labor, or into the fields and village for exercise and recreation, indulging them in long walks, on a pledge of punctual return, without any attendance or supervision; and we have seen the most decided benefit from these indulgences. At least, *eighty* patients have thus gone unrestrained during the past season, spending day after day, and week after week, in this independent manner, and no one has escaped, or apparently wished to leave the Hospital till regularly and honorably discharged. Not less than an equal number have labored more or less, or taken long walks and rides so slightly attended as, in innumerable instances, to admit of easy escape, with equal safety and advantage: the attendants, in such cases, being considered by them as guides and directors, rather than as task-masters and watchmen. Another class of patients, whose violence or discontent precluded these indulgences, have labored almost daily under the eye of a skilful and vigilant attendant, and have been made more healthy and happier by the exercise thus afforded them. Besides these indulgences

without the walls of the Hospital, the verandahs afford delightful opportunities of exercise and airing, amusements and labor, particularly to the females which contributed greatly to their comfort and happiness. These indulgences are extended alike to all who are capable of appreciating them. The benefit that has resulted from these and other modes of management in daily operation cannot be better illustrated than by the brief rehearsal of a few interesting cases, most of them from the list of incurables.

No. 1. Within a month after the opening of the institution, there was placed under our care a man who had committed homicide. On his trial for that offence, he had been proved insane, and, for want of a more suitable place, was confined in the common jail of the county in which the offence was committed. Here he had been imprisoned *seventeen* years, sometimes being permitted to have the company of the worst prisoners with whom he often quarrelled, and by whom he was often sadly beaten and abused; sometimes he was a long time in solitude and occasionally loaded with heavy irons, at all times he was in close confinement and considered a dangerous man even when under the severest restraints.

When he first came into the Hospital he was violent, noisy, and often furious; he was permitted to enjoy the privilege of walking in the hall unrestrained on condition that he would not injure his associates. he soon became more calm and pleasant, and was occasionally taken out to labor; he conducted well, and was soon indulged with greater liberties;—the bible was given him, and he was fond of reading it; he worked much abroad and with great pleasure, assisted the women in the kitchen to scrub the floors and in their other labors. He has been thus indulged more than *five* years, he has injured no one abroad, and has been respectful and civil. He now takes his meals at table quietly and orderly, attends chapel much of the time, and, although a very insane man, and at times violent in his language, is contented, peaceable and happy, and when calm has no desire to leave the Hospital, but considers it his residence for life.

No. 2. In the spring after the opening of the institution, a female was admitted who had been insane *seven* years. She was so extremely violent for some time before she was brought to the Hospital, that her friends had chained her closely to the floor, and she had remained in this position so long that she had entirely lost the use of her limbs. When she came under our care she was considered incurably insane and lame for life. At first she was quite helpless as to getting about,

but so furious at times as to tear her clothes and do violence to all within her reach. By persevering efforts her limbs were after a while restored, and her health and mind improved.

She went home to her friends and remained a year, but finding that, though greatly benefited, she was not entirely cured, her friends, with her consent, it is believed, again brought her to the Hospital. During her second residence with us she did better than before, but still exhibited a capriciousness of temper and estrangement of feeling that showed remains of disease. She was again put upon the use of remedies which she continued *six* months, when she seemed to be entirely restored. She now returned to her friends, and has since been well both in body and mind, and is now a pleasant, industrious and healthy young woman.

No. 3, is a case of homicidal insanity, the subject of which has been in confinement *thirty-four* years. Before he came to the Hospital, he had for more than a quarter of a century been confined in a filthy dungeon without the comforts of life, with neither bed nor covering to keep him warm, and infested with vermin to such a degree that he could hardly sleep if the means of comfortable repose had been afforded him. He declares that for *seven* winters he did not feel the influence of fire, and that on one occasion a stout and healthy cock lighted upon a tree by the window of his cell and froze to death; this was the "cold Friday and Saturday" which, in the recollection of all who felt its influence, was proverbially the coldest season of the cold. During these *three* days he declares he did not lie down or sleep, but kept continually walking to keep himself from freezing. He remained in this solitary and filthy cell, the object of the sport and abuse of every idle and mischievous person who took delight in the rage and violence which he could excite, till removed to the Hospital.

When he entered this institution he was furnished with a neat and cleanly room, a comfortable bed, and every thing necessary for his happiness. He had not been shaved for many years, he had not eaten at a table or in company, neither had he used a knife and fork during the whole period of this protracted confinement; he soon, however, relearned their use, and became, to a considerable extent, a civil, quiet man.

Although the delusions of insanity remain the same, he is now comfortable and happy, he walks abroad at this time unrestrained, takes great care of the poultry, walks about the town and village in company with others, keeps his room in perfect order, makes his bed in the

neatest manner, attends chapel every Sabbath, and enjoys life as well as the nature of his delusion will permit.

No. 4. In the summer of 1834, there came into the Hospital a foreigner whose great violence had rendered him the terror of all who came in his way; his beard was long and dirty, his countenance exceedingly insane, and the rapidity and vigor of his muscular movements were such as to excite alarm in all who witnessed his gestures or listened to his vehement and excited language.

The first business was to shave him. Accompanied by the steward I visited his room to persuade him to submit to the operation without restraint. I proposed to him to be shaved, he replied, "not till you put me in-iron," and appeared greatly enraged. He was soon quiet, and I said to him in a decided tone, "you must be shaved; take your seat on the bench, and let the man shave you peaceably, for it must be done." He seated himself quietly, and was shaved without trouble. After the operation was over he asked me to give him a paper to show that the shaving was not voluntary but by compulsion, as his countrymen would not receive him and treat him with respect if he had lost his beard which his religion obliged him to hold sacred. I promised him the certificate and he was satisfied, but was afterwards unwilling to be shaved although he never again resisted. He left the Hospital after some months' residence, in consequence of its crowded state, but returned *two* years afterwards the same savage, terrific man as before. He was violent for a time, but became more subdued, and after a while quite harmless and clever, except, occasionally a few days of excitement. During the summer and autumn he has walked the grounds and enclosures of the Hospital unrestrained, on giving his pledge that he would not extend his walks beyond the limits prescribed to him. He has been faithful to his engagements, and, although no less insane than ever, and having a full conviction that he ought to be immediately liberated, and that we have no right to detain him; yet he scrupulously regards his pledge, and will not violate it upon any consideration. He flies his kite, unites in sports with the neighboring boys who are fond of visiting him, is generally respectful, and attends public worship on the Sabbath much of the time.

CASE 5. In the spring of 1835, a man was brought into the Hospital who had been insane *sixteen* years. He had been confined for a long time in a cage, and having become more quiet than usual, he was unchained and enlarged, he seized the first weapon that came in his way, assailed his brother, who was also insane, and slew him on the

spot; one or more other members of the family were fortunate enough to escape his violence, and as soon as practicable he was secured and chained in the safest way possible, and so closely that he was unable to walk or rise. In this situation he was brought to the Hospital. When he first came under our care, he was unable to stand or walk, but could hop about a little. In this manner he moved for many months. His habits were as filthy as possible; so much so that he was confined for a time in a solitary room; he had nearly forgotten the use of knife and fork, and took his food in the most savage and offensive manner. It was a long time before these habits could be changed. After a time, however, he became more decent in his habits, and more cleanly in his person. His limbs, by the greatest attention, improved, and in a year he was able to walk, though in a very indifferent manner. As his habits became more cleanly, he was brought into the halls and associated with the other patients. In the course of another year, he was able to walk well, his habits became cleanly, and he could do some labor; at present he is altogether cleanly, walks well, takes his food at table with others, using knife, fork, and crockery, walks abroad, works some, has attended chapel on the Sabbath, and is a very decent man in all respects so far as cleanliness is concerned. His mind is much demented, and will never recover.

CASE 6. The following account of a man, who, for most of the time for more than twenty years, had been confined in a cell of a work-house, was transmitted to us about the time that the subject of it was admitted to the Hospital. He is a man of *sixty-eight* years of age, and has been insane nearly *thirty* years.

J\*\*\* M\*\*\*, the person about whom you request information, was born in this town; he is a shoemaker by trade; his natural temper is irascible and, before his confinement, he drank spirituous liquors freely and habitually, but not to the extent which, in popular language, gives the name of drunkard. He married early, and has a wife and children in the State of ———. His insanity first discovered itself in the violence of his language, the abuse of his family and others. He was prosecuted at this time for beating a colored woman, merely for the reason that she was a negro. After this, he was confined in the county jail; this was during the summer of 1812. After his release from prison, he remained at large, although frequently insane, till 1816, when he was confined to the house of correction, by two justices of the peace, as a lunatic person so furiously mad as to render it dangerous to the peace and safety of the people for him to go at large. After remaining in

the house a few months he was discharged, and for a time attended to his affairs with occasional aberrations of mind. His conduct becoming outrageous he was committed to the work-house, and has remained there until this time, a period of more than twenty years, and most of the time has, of necessity, been confined in a cell; sometimes he has been so calm, and rational as to be permitted to associate with other inmates of the work-house; but as the recurrence of the more violent symptoms of insanity could not be foreseen, he has frequently been kept in close confinement during the intervals between his paroxysms, when, under other circumstances, he might have been at large. He has never showed any disposition to put an end to his own life, but has frequently destroyed his bedding and every thing within his reach. For years he has had antipathies against particular persons, so that, when in his fits of violent derangement, he would uniformly utter the most abusive language to them. His language is frequently profane, obscene and noisy, sometimes continuing his hallooing through several nights in succession.

I have rather given the sense than quoted the language of the writer, in his interesting account of this case. His father was insane many years; and his sisters more or less so. In February last, this man came into the Hospital; for several years before his removal he had not been shaved. On the journey, which was on a cold day, he took some cold and appeared considerably sick; he was at this time uneasy and impatient; but we kept him in the hall with sixteen others, and he injured no one. He was at first unwilling to undress at night and take his food at table. After a while, however, he consented to do both, and for a long time has given us no trouble of this kind. In less than a month he attended religious worship on the Sabbath, and continued to do so for many weeks in succession. Sometime in the month of June he became excited; for a few days he talked much and loud; he was soon calm, and has continued so; he is now pleasant and quiet, walks about occasionally without attendants, goes to chapel on the Sabbath, dresses neatly, is very cleanly in his person, is civil and respectful to all in authority, and harmless and docile with all other patients with whom he associates; he keeps his bed, room, and garments clean, takes his food at table with knife and fork with propriety, and is in all respects a decent man. His mind is as insane as ever; he has great possessions in his native town and in Boston, and offers large sums if he can go on to his farm and be suffered to manage his own business unmolested.



CASE 7. Among the first patients committed to the Hospital, was a vagrant, who, having wandered from his native State in the far West, was taken up and confined in one of the Houses of Correction in this Commonwealth. It was not known how long he had been insane, or what had caused his malady. The place of his confinement was not the best, and when he came into the institution his appearance was most forbidding. He was a mere skeleton in flesh; his countenance was haggard in the extreme; and he looked as if he was fast declining under fatal disease; his mind was as dull and imbecile as his body was emaciated; he had a voracious appetite, and complained of having been starved; he was entirely negligent of his personal appearance, and his habits were all vitiated and depraved. He was allowed as much wholesome food as it was proper for him to have; but it was a long time before he became satisfied with his supply. His room was neat, and his bed comfortable, and it was enjoined upon him to keep them so. After a while, his appearance improved; he gained flesh and strength, in the course of *three or four* months his health became good; and he has since become corpulent and enjoys excellent health. His mind and feelings, however, did not improve so favorably, he was morose, ill-natured and obstinate. He made a desperate attack upon the Steward, who was endeavoring to persuade him to labor, and was determined that he would not work at any rate. After a while he could be persuaded to do some work, and in the course of the year became reconciled to labor; he now assists much in the domestic work of the establishment, and often goes into the garden and field, and labors faithfully. The vigor of his mind has hardly kept pace with the increase of his physical strength, but has brightened up greatly, and he has become a very pleasant man. The greatest change has been made in his habits; it was nearly two years before he desired to change his habiliments, and assume the character of a gentleman; he then wanted better clothes; they were furnished him, and he was very much gratified; he kept them well, and they made him respect himself. He now works every day, goes about the premises wherever he pleases, attends chapel every Sabbath attired in his "Sunday suit," with his "fingered gloves" and his "nine dollar hat," and enjoys himself well. He is still very insane, owns many houses and farms, great stocks of cattle, and vast possessions in this town and elsewhere, which he sometime intends to visit and enjoy.

CASE 8. In the Spring of 1836, there was brought into the institution, a female, who had been long in confinement, and who was reduced

to degradation the most extreme and miserable that it is possible to conceive; so bad were her habits that she was kept in a solitary room where she was regardless of all decency; she had not, for a long time, associated with any human being, and was considered hopeless and incurable. She was dressed in a decent suit when brought to the Hospital, and when introduced into her neat and pleasant apartment, she seemed pleased. The next day she worked a little and showed that she had not forgotten how to labor, and she was encouraged to persevere. Her personal habits, however, continued bad for a long time; as she was brought to mingle more with decent society and saw what were the practices of others, her self-respect increased, and her habits improved. She is now neat and cleanly in her person, engages in daily labor in the work-room, attends the matron's parties weekly, and dresses genteelly; she attends chapel every Sabbath, and much of the time has united in our choir of music, and thus from the most degraded and filthy being, she is transformed into a decent and useful woman. Yet there is no change in the state of her mind; she is as insane as ever, and has the same delusions which have characterized her case from the commencement.

CASE 9. The subject of the following case of Homicidal Insanity came into the Hospital in the Spring of 1834. He was a young man of *twenty-three* years of age when he committed the deed. He was known previously to be somewhat insane, but was supposed to be harmless, and entirely safe to be at large. On the morning of the homicide, he was left in the room with a child, some accounts have said, asleep in a cradle, but he says in a bed, while the mother of it went to milking. While she was gone, an irresistible impulse seized him to kill the child; he took a razor and cut its throat so effectually that it appeared not to have moved; and when the distressed mother returned to witness the horrid spectacle, it was dead. He then seized an axe and followed an aged gentleman to destroy him also; but he was rescued in time to save his life, and the maniac was arrested and confined. It has been said that he acted at the time from the supposed direction of Almighty power which he dared not resist; he denies this at present, and says he can give no reason why he killed the child, but he could not help it and is entirely innocent. For a long time after he came into the Hospital, he had turns of great anxiety and distress; at such times he would repeatedly and loudly proclaim his innocence.

From the time of the homicide till he came into the Hospital he was in confinement in the jail of his native county, except for a season when

he was in an institution for the insane, from which he returned to the jail without particular benefit. For a long time after he came under our care he was a most unhappy man, talked loudly, vehemently and frequently about the child, and always has appeared particularly afraid of death. He has, for the last year or two, been generally quiet, works well, appears neat and cleanly in his person, keeps his room in good order, takes his food in the most quiet and orderly manner, attends chapel, and conducts himself well every Sabbath, and always wears a pleasant countenance, on which, nevertheless, anxiety is often seen to dwell; and he most earnestly wishes that, if he dies, he may be removed to his native town and be buried with his fathers.

He is not very communicative on the subject of the homicide, it is possible he may not recollect all the circumstances of that dreadful day which has, for years, filled his mind with so great apprehension and alarm.

CASE 10. The subject of this case came into the Hospital in the autumn of 1837; he had been insane about *eighteen* months; his age was *sixty-seven*. The information given respecting him was this. The winter of 1836 was one of great severity in the region of his residence.

The supply of fodder for the cattle was deficient, and among others, our patient suffered greatly in his feelings to see his stock suffering with hunger, and, being unable to procure the means for their subsistence, was obliged to see some die of starvation, others he killed to save them from the same dreadful end. In addition to this, his wife sickened and was languishing with a rapid consumption. He was sustained in all these trials by the consolations and promises of Christianity; he was an exemplary professor of religion, and his piety was ardent and sincere. In March 1836, a pig belonging to him was attacked with hydrophobia and was running at large among his and his neighbors' flocks; he with others had great difficulty in securing the dangerous animal, and it cost them a labor of many hours to accomplish it; he became greatly fatigued and felt unpleasant sensations in his head, and on the following nights was sleepless and restless. His head feeling so bad, he was advised to be bled. This was done freely; but he gained no relief, and almost immediately became worse. For the first time he now neglected to read his Bible, and omitted his morning and evening devotions. His sleeplessness and restlessness disturbed his sick wife, and he took separate lodgings. He now felt strangely indeed, and began to look upon himself as the vilest of men; the Bible, which had

been his delight, became a thorn to him, and for months after he came to the Hospital the sight of it, mentioning it, or hearing it read, would throw him into the greatest possible excitement, and he would scream violently. While in this condition he had a great propensity to suicide, and, on one occasion he ran, with all speed, to a neighboring river, intending to drown himself; some of his friends seeing him and suspecting his object, pursued and overtook him, thus preventing the dreadful purpose of his mind.

When he arose from his bed on the morning of the 19th of March, as he related the story, having passed a sleepless and wretched night, he felt as if he could tear in pieces every thing before him; a sudden impulse seized him that he must kill his wife; he rushed into her room, seized her as she lay sleeping, exceedingly feeble and emaciated, threw her upon the floor with great violence and stamped upon her. She awoke in great fright, screamed "murder," and exclaimed, "Mr. ———, you have killed me." The family were aroused by her cries, and soon came to her rescue. He was secured and confined; his wife failed rapidly after this, and soon died. From this time he became impressed with the idea that he had murdered his wife; her image was constantly before him as she lay upon the floor, her countenance wild and terrific, and the exclamation, "you have killed me," constantly sounded in his ears. Before and after he came to the Hospital he would exclaim at the top of his voice, "I killed my poor wife," and become so agitated that his whole system would tremble with agony and alarm. At the time of his wife's death he became frantic from the conviction, that he had committed murder and killed the wife of his youth whom he tenderly loved; he said he was "given over to the devil," was "unfit to live," and "a fit associate for the meanest imp of the infernal regions." He contemplated suicide and sought opportunities to effect his object, but was constantly watched by his family, or confined so as to prevent it. At times he would be so calm as to labor moderately; but he informed me that, so great was his propensity to kill his associates and the children that were about him, he dared not trust himself with the implements of labor in his hand, and that on more than one occasion he dropped them and ran away. He felt an irresistible propensity to kill, yet shuddered at the thought of doing a deed so horrible; he knew it was wrong, but yet in a moment it would return again so forcibly, that he could not restrain himself. When most calm, he suffered most from the apprehension that he should do some terrible

deed; when this impulse to destroy was greatest, and a mighty struggle was going on in his mind, whether he should instantly destroy his family or not, *they* were often quite unconcerned, pursuing their employments, not suspecting his designs.

On one occasion he felt that he must burn his barn; he instantly seized a fire-brand and ran towards it with the fullest intention of accomplishing his object; he was fortunately prevented by the interference of his friends. Much of the time his thoughts were occupied by the contemplation of suicide, and the impression that he must commit homicide.

For a long time after he came to the Hospital he was the most wretched man conceivable. At the sight of the Bible he would scream many minutes so loud as to disturb the whole establishment; by a visit from myself he would be thrown into the greatest agitation, and declared that he wanted to kill me and would kill me, making use of language violent and profane. At times he was composed and rational, would converse calmly, tell a story collectedly, and perhaps while seated by him, one of these impulses would seize him, he would be instantly in a rage and scream with frightful violence.

It was many months before he improved essentially; his physical health was bad; he had frequent, slight attacks of erysipelas in the face, and other sudden attacks of ill health. After a long time he became more composed and cheerful; his diseased impressions wore away; he was able to read the Bible with comfort and satisfaction; attended religious worship in the chapel; lost his gloom and despondency, and became a pleasant, social and rational man. He left us and returned to his home with the best feelings towards the institution and all his former affection and attachment to his family. Most of the facts above detailed respecting the patient before he came to the Hospital were derived from him after his mind became composed and rational.

The history of similar cases might be written to fill a volume; but enough has been presented to show that the institution, besides restoring many to health and soundness of mind, is ameliorating the condition, and increasing the happiness of a large class of the most unfortunate of human sufferers whose history is never given to the public; and these cases are, from time to time, presented to show the benefits which result from watchful care and mild management in cases hopeless and incurable.

The results of labor have never been more satisfactory than the past

year. It is the first season that we have improved the land procured for us by the munificence of the government; much of the farm purchased for us was in a low state, and will require enriching and cultivation to make it as productive as it ought to be; it has, however, already been very much improved. There is a manifest difference in the feelings of the cultivator when the land is his own or that of another; this feeling pervades our family as well as others. The inmates who labor have taken an interest in all improvements, and have lent a cheerful hand in effecting them.

The garden, which has been cultivated for some years, has become quite productive, and is an interesting field of labor to a very large number of the inmates. *Ninety* per cent. of the labor of a garden containing *four* acres, cultivated principally to roots and minor vegetables, has been performed by patients, many of whom have derived great pleasure and advantage from the exercise.

The following statement, furnished by the Steward, shows the amount of produce raised, the profit of our agricultural and horticultural operations, and the labor on improvements of various kinds.

In the garden were raised			
500 bushels of Carrots	at 40 cents a bushel,	\$200 00	
200 " Beets	" 40 " "	80 00	
80 " Onions	" 90 " "	72 00	
75 " Turnips	" 40 " "	30 00	
90 " Ruta Baga	" 2 shillings "	30 00	
100 " English Turnips	" 25 cents "	25 00	
1000 Cabbages	" 5 "	50 00	
1 1-2 loads of Winter Squashes,		30 00	
5 " Pumpkins at \$1 50 per load,		7 50	
4 barrels of Pickles,		16 00	
Green Vegetables in abundance, as Beans, Peas, green			
Corn, Squashes, Lettuce, Cucumbers, &c., estimated at			75 00
Produce of the Garden,			<hr/> \$615 50

Besides this amount a large quantity of excellent fodder was furnished from the tops of the Ruta Baga, Beets, &c., which almost wholly fed a pair of oxen and seven cows for some weeks during the season of drought.

## On the farm were raised

300 bushels of Potatoes at 37 1-2 cents per bushel,	\$112 50
40 " Corn at \$1 17 " "	46 17
16 tons of Hay at \$15 per ton,	240 00
10 loads of Pumpkins at \$1 50 per load,	15 00
Corn Fodder, estimated at	10 00
Pasturing seven cows 22 weeks, at 50 cents,	77 00
	<hr/>
Farm,	\$500 00
Garden,	615 50
	<hr/>
	1116 17

## We have raised, fattened and killed

12 hogs, weighing	4800 lbs.	
6 pigs, "	1720 "	
	<hr/>	
	6520 lbs. at 11 cts.,	717 20
Pigs sold, \$28 00; killed 2, \$5 00; Poultry, 128 lbs. at		
16 cents,		51 48
		<hr/>
		1844 85

In addition to this, much labor was employed in various improvements on the garden and grounds. At least *one hundred* rods of wall have been built, the stone dug and drawn, ditches have been made, land cleared of bushes and stones, &c.

The *sixteen* tons of hay were mowed and made entirely by the patients; the carting alone being done by the farmer. From *four to five hundred* cords of wood have been sawed and piled; *two* cellars for the infirmaries were dug, *fifty-one* feet by *twenty-two*, a very large proportion of which labor was performed by the inmates of the Hospital.

The females have not been less industrious than the males, but have been constantly employed in the various departments of domestic labor, making clothes and bedding, knitting socks and stockings, binding shoes, &c.

In the shops, more or less labor is constantly done. In the carpenter's shop, the labor has been principally confined to repairing furniture and utensils, and making such articles as are needed in the establishment.

In the shoe shop, the following statement will show the extent of our operations.

The amount of work done, according to the statement of the Overseer, with value of tools and stock on hand,			\$1264 66
Expenses have been for stock,		\$650 27	
“ “ tools,		59 98	
“ “ fuel,		10 00	
Board and wages of Overseer,		301 82	
		<hr/>	1022 07
Making a profit of			<hr/> \$242 59

The shop has been in operation *ten* months.

There have been from *two* to *four* inmates in this shop constantly, during the season; they have been required to do but little labor, no more than has been advantageous to them. In a number of cases, this labor has proved decidedly beneficial to convalescent patients, and has done good to all. There may be some discount on the value of manufactured articles on hand; but there can be no doubt that the business has afforded a profit; and its convenience in repairing and furnishing shoes for our family, must be obvious to all.

At the commencement of the report I remarked that we had enjoyed uncommon health in the institution, and that much benefit in this particular, may be attributed to the excellent arrangements, in the Hospital buildings, for *warmth* and *ventilation*; both these objects are effected by hot air furnaces in the basement. From much experience and no little reflection I am fully satisfied that every other mode of warming, is objectionable; and no other assists in ventilation, an object hardly secondary to warmth, as a means of promoting health in this and similar establishments. Stoves, steam and boiling water may be used to afford a proper degree of temperature, but can never be as safe and effectual as the furnaces which are here used. From the former, the warmth will not be well diffused, and the temperature will not be equal in different parts of the apartments; some parts will be too warm, and others too cool, and the air will rush in at every crevice to supply combustion and the waste which the outlets will occasion.

Furnaces to warm such establishments should be placed in the basement of the building so that the heat can ascend directly to the apartments above; the air chambers should be capacious, and the passages large so that the current can be free, and a large volume of air be forced into the apartments heated not many degrees above the temperature at which they should be kept, so that the whole air may be



frequently changed, and the foul air be forced out at the ventilating passages.

In all cases external air should be used. If the cellar be sufficiently large to afford a supply, the air is always contaminated with vegetable odors, or other offensive effluvia, which is a sufficient objection to its use; besides this, the air of a cellar, when in any way removed, must always be supplied from without. Many attempts to warm buildings in this way, have failed for want of attention to this important circumstance. It requires a great quantity of air to warm so extensive an establishment as a Hospital, or so large a room as a church; if the cellar be as large as the building itself, the air cannot be removed from it to any great extent, unless the means of supplying the deficiency are amply provided; for one given quantity of air cannot be removed without another be at hand to supply its place. If, therefore, a cellar is to be relied upon to supply air for a furnace, it is obvious that it must be many times as large as all the apartments to be heated.

In the construction of such furnaces, the principal design should be to keep up a constant and regular influx of warm, pure air, in such abundance, as to change the whole atmosphere of the apartments, frequently. In this way the currents are made to be outward, not only through the ventilating passages, or flues, but also through every crevice which admits air into the room.

The currents from the crevices being small, are met at their threshold by an ample supply of warm air, which, if it does not force it back, will warm it, and thus render it inoffensive. In rooms heated in this manner, the temperature will be equable and well diffused, so that at the windows and by the walls, it will be comfortable even in cold weather; this will not be true of any other mode of warming.

For the purpose of ventilation, the flues for the escape of the contaminated air must be in due proportion to the apertures admitting fresh air from without; if too small, the escape of foul air will be retarded; if too large, the temperature of the rooms will be too much reduced, or the consumption of fuel be greater than is necessary. As on one hand we cannot derive air from a source which does not contain an abundant supply, so on the other, we cannot force any considerable current of air into a room already full of air that has no outlet; as well may we attempt to force water into a vessel that is already full.

The furnaces we use and most approve in this Hospital, are constructed by an ingenious mechanic in this village, one of which is

sufficient to warm fifty apartments in three stories, and the long halls connected with them; the quantity of fuel which these consume in a day is one quarter of a cord of good wood during the cold season. In the Hospital, we prefer wood to coal for many reasons, particularly as it is here much cheaper. The preparation of wood for the fire, sawing, cutting, splitting, piling and carrying to the various departments, makes a great deal of valuable labor for our people, of which they are fond, and which they volunteer to perform. All the labor upon coal is disagreeable and forbidding. There are other reasons not less important for preferring wood to coal. If it be found that the temperature of the rooms is too low, a small quantity of dry wood will make a fire that will raise it immediately without making it too great in the end; whereas, if coal be added to the fire under such circumstances, the temperature will continue to diminish for some time; and, when the whole becomes ignited, the fire will be too great, and the apartments become too warm.

I have made these remarks on the subject because I believe that some misapprehension exists as to the utility of furnaces in warming large establishments, and because I have the fullest conviction, arising from much experience and observation, that no other mode of warming or ventilating Hospital buildings should be adopted in any case, or that they can be equally conducive to the health and comfort of the inmates.

The Infirmary, erected by order of the Government, have been completed in a very satisfactory manner. They are durable structures of *two* stories, each *fifty-one* feet in length and *eighteen* feet in width, occupying the entire space between the lateral wings and the lodges on one side, and the wash-room on the other.

The buildings are of brick and the roof of slate, which makes them nearly fire-proof; the apartments are spacious, well warmed and ventilated, and so secure as to render them as safe from escape as any part of the Hospital. They have been fitted up in a neat and comfortable manner, and are now ready for the sick.

It is a source of great satisfaction that we now have departments out of the halls, for the sick, where they can be quiet and undisturbed, and receive all the aid that any private boarding-house can afford. In case of an epidemic or infectious disease, the inmates of the wings may be preserved free from danger by the timely removal of all the infected. The basement rooms are useful for the storage of wood or vegetables, and contain the furnaces used for warming the apartments above.

Ever since the opening of the Hospital we have been impressed with the utility of reading for the better classes of our patients. The Bible and New Testament have been given to them freely and unreservedly; newspapers and periodicals are greatly sought after, and extensively circulated throughout the establishment. From the Worcester County Bible Society, we have received two very liberal donations of Bibles and Testaments which lay us under the deepest obligations to that excellent Association. From Alfred D. Foster, Esq., Bezaleel Taft, Esq., John Tappan, Esq., Samuel Jennison, Esq., and Miss Emily Gardner, we have received valuable contributions of books which have furnished much useful and interesting reading for our people. In the month of July, a Miss Harland, of Philadelphia, visited the Hospital, and attended the religious worship of our Chapel on the Sabbath; she expressed herself greatly pleased, and on leaving, placed *ten* dollars in my hand, with which she requested me to purchase a judicious list of books, designated by herself. Soon after this, our esteemed friend and fellow-laborer, Wm. M. Aul, M. D., Superintendent of the Ohio Lunatic Asylum, while on a visit to the Hospital, also contributed *ten* dollars for the same benevolent design. For two successive years, the Trustees appropriated *twenty-five* dollars to purchase suitable books. By these means we have been able to furnish much valuable reading for our family, which has relieved many tedious hours of seclusion and confinement.

It is now more than a year since we commenced having religious worship in our chapel. During that time, with very few exceptions, we have had *two* regular meetings on each Sabbath; more than *one hundred* sermons have been preached to our congregation by about *thirty* clergymen of different denominations. At the present time we have a regular chaplain. We have a choir of singers, who perform very acceptably every Sabbath; in the course of the season, from *thirty to forty* patients have belonged to this choir, on some occasions the music has been led by a patient; we have never less than *two*, and generally *three or four* musical instruments in our choir.

It was our design at the commencement of religious worship for the *insane*, to give our chapel all the solemnity of a church dedicated to Almighty God, and to our religious exercises, all the dignity and character of other religious assemblies; for this purpose we employed a regular preacher, assembled a choir of singers, and adopted the same hours of meeting, that are customary in the New England churches.

We soon found, that to carry out our plans to perfection in this im-

portant part of moral management, we must have the aid and assistance of every person employed in the Hospital. If individuals chose to attend church elsewhere, it was proof to the minds of our patients that other places were preferred, and of course supposed better. This, to many, seemed at first too arbitrary. Almost every person employed at the Hospital had attended some one of the churches in the village, paid his taxes and owned or rented a seat for which he had paid or was obligated to pay. After much deliberation it was resolved to take a decided stand and make a regulation, that every officer of the institution must attend worship in the chapel, on the Sabbath, and nowhere else. The example was set by my own family, my Assistant, the Steward and Matron. With an unanimity and disinterested zeal worthy of all commendation, did our whole family come into the measure, and have persevered, without a desire of change to this time; to this most benevolent and necessary action of our whole body of attendants and assistants, we are greatly indebted for the perfection and beauty with which this part of our plan of management has been accomplished.

The number of patients that have been in the Hospital, since the chapel was dedicated, is *three hundred and seventy-six*, of which number, *three hundred and fourteen* have attended religious worship. Of the *one hundred and seventy-seven* that have been admitted during the last year, *one hundred and forty-four* have been in the chapel more or less.

The number that assemble on each Sabbath varies from *one hundred and twenty* to *one hundred and forty*, making, with our family, a congregation of from *one hundred and seventy-five* to *two hundred*.

The order and decorum of these meetings has been to all who have witnessed them no less gratifying than surprising; the patients have, almost without exception, felt the importance of quiet and order.

The power of self-control, which many excited patients have exercised in the chapel, during the hour of worship, a control which no motive could induce them to exercise elsewhere, is itself a most forcible argument in favor of religious worship for the insane.

Many interesting examples might be given of the restraint which these occasions have imposed, which exhibit, in a strong light, the influence which our institutions of religion have upon the character of our citizens even when insane.

On the evening previous to the dedication of the chapel, a patient was brought to the Hospital, who had been quite furious and excited for a considerable time; he was so much fatigued by his journey, that

he went immediately to bed, and we hoped would be quiet and rest well through the night; after midnight he arose in great alarm, rushed to his window and broke the glass as rapidly as possible. The disturbance which he made, aroused me and others, and we were immediately in his room; he was exceedingly agitated and declared that enemies were breaking into his room and he was fighting them off. He was placed in a strong room and suffered to remain till morning. When I visited him in the morning, he was composed and peaceable; having learned that we were to have a public meeting in the chapel, he proposed to attend. I expressed some fears that he would not be able to control himself; but upon receiving his pledge, consented that he might attend. During the service he was perfectly quiet and conducted with the utmost propriety; the next day he again broke his window on the same pretence. He continued considerably excited for some time after, but attended chapel every Sabbath and conducted with the utmost propriety. He recovered favorably and was discharged in less than three months.

Sometime in the Spring, a female patient came into the Hospital in the highest state of excitement; she disturbed the whole establishment for *three or four* days and nights previous to the Sabbath. On Sabbath morning she appeared more composed, but far from being quiet; when I visited the hall in which she was confined, she approached me very respectfully and asked if she could attend meeting. I told her our rules were very rigid and I was afraid she could not observe them strictly; she inquired what they were, and was told that she must sit still, be quiet and attend strictly to the preacher; she promised to do all and was permitted to attend. She was still till the choir began to sing, when she struck up loudly, but not discordantly with the choir; she was gently checked by the attendant who sat beside her and requested not to sing; she replied in a whisper, "That was not in the pledge to the Doctor." She however, concluded to desist.

After the service was over, she complained bitterly that she was not permitted to sing unmolested, and declared that if she went in the afternoon she would sing at any rate. I was informed of her determination and sent word to her, that as she was not accustomed to sing with our choir she must defer it till she had some opportunity to practise with them, when we should be very glad of her assistance. She hesitated a minute, and then said, "give me a cracker, with the aid of that I think I can stop my mouth and keep still." The cracker was given her; during the singing she used her cracker, and went through the

service perfectly well, and, although often much excited, she has always conducted with propriety in the chapel.

Within a few days a man came into the Hospital in the state of most furious mania. He arrived in the evening, passed a disturbed night and was greatly excited the following day. The next night he was more calm, and was removed to a more comfortable apartment than he had previously occupied. This was on Friday morning. When I entered the hall in which was his apartment, to make my morning visit, I found him in great excitement, having just broken every thing within his reach, and exhibiting the greatest violence. When the attendant went to his room he made a desperate attack upon him, tried to strike, kick and bite all who assisted in holding and securing him with proper confinement. He soon became more calm, and the remainder of the day and the next he was composed and quiet, and promised that he would scrupulously observe every direction that I should give him.

The next day, being the Sabbath, I found him in bed, calm and quiet; he expressed a desire to attend religious worship in the chapel, on receiving his pledge he was permitted to attend. He conducted with the utmost propriety, and although yet quite insane has attended regularly each chapel exercise since, and has appeared as well as it is possible for any man whatever to appear.

On the same day that the last named patient came into the Hospital, another man equally violent and insane was also admitted. He was not as manageable at first as the patient last mentioned, but tore his clothes and refused in any way to be covered. During the whole of the Sabbath he was naked in his cell, and wholly destitute of self-command and self-respect.

In the course of the next week he became more composed, consented to wear his clothes, and was removed to a more comfortable apartment. He was pleasant, but quite insane and considerably boisterous. On the Sabbath, which was the last, he proposed to attend chapel; on his conforming to the rule, consent was given that he might attend. He went during the day, was greatly delighted with the meeting, and has since changed in the most favorable manner; he appears at this time to be rapidly recovering.

Sometimes in the winter, a young woman was brought to the Hospital, whose mind appeared perfectly demented; she talked incessantly in the day time and most of the night, and there appeared to be no amendment in the case for a long time. One Sabbath morning while

talking in her indistinct and rapid manner as usual, I proposed to her to attend chapel more to see what influence the proposition would have upon her mind than from any expectation that she would consent to go or would command herself if she went. She expressed a desire to attend, and was permitted; she was perfectly silent and quiet for the hour, made not the least disturbance and returned regularly to her room; no sooner had she done so than she commenced talking again and continued it till the hour of service in the afternoon. She again attended in the same orderly manner and continued to do so for weeks although the same disposition to talk remained. She ultimately recovered, and the first motive which was effectual to excite self-control, was the desire and determination not to disturb the religious exercises of the Sabbath. *The benefit of one hour of self-control in such a case, from such a cause is incalculable.* It is needless to add cases. If a stranger was to visit our congregation in the chapel, he would at first discover little worthy of observation; he would find from *one hundred and fifty to two hundred* people assembled together, quietly seated, neatly dressed, resembling in all respects an ordinary congregation.

If, however, he was told that here from *eight to ten* homicides were mingled with the others, and *four* times as many other individuals who, in their moments of excitement, had violated the public peace or trampled on private rights when wholly irresponsible; that on his right hand sat the "owner" of all things whose self-complacency will not be likely to be disturbed by any animadversions which may be made upon the character of the "true God;" that by him sits the poet and commentator who swallows every word that is uttered from the desk, and returns to write commentaries on the text which shall, at some future day, fill his purse with riches and the world with "celestial light;" that here may be found "the King of England, the King of Heaven, the heir apparent to the throne of Prussia," and the "Prophet over Albany, who speaks from Jehovah," and who daily expects the "Patroon" to send him a coach with black horses, to carry him to his friends; that here is also the military chieftain, the man of wealth, "*the rich poor man and poor rich man,*" the mother of Christ and *innumerable* other characters not less consequential; that here may also be found the laughing idiot, the perpetual jabberer, the gay, the passionate, the depressed, a hundred individuals with the delusions, impulses and propensities of insanity so active as to be constantly obvious in their conduct and conversation elsewhere, now listening with deep solemnity to the exhibitions of divine truth, uniting with apparent

devotion in the fervent prayer, and joining with pleasure in the song of praise,—I say, could all this fail to astonish him? Can an hour, twice on each Sabbath, spent in this way fail to make the most favorable impression on the insane mind?

What may not be expected from one hour of self-control, brought into requisition twice on each Sabbath, independent of the instructions and admonitions from the desk?

The more I contemplate this subject, and the more I witness this influence, the greater is my estimate of good from our chapel exercises.

There is no community that observes the Sabbath more strictly than that of the Hospital; no labor is done but what is work of necessity or mercy. Amusements are all laid aside, and the Bible, religious publications, sermons and other appropriate books are very generally read on the Sabbath, before and after worship, by the quiet and sober part of our family.

It has ever been our plan to bring the insane mind under the influence of rational motives as far as possible. We discourage as far as practicable every departure from the customs and habits of rational society; we acquiesce in the general desire to keep the Sabbath as holy time, and discountenance both labor and amusement as incompatible with the solemn contemplations and religious duties of the day.

That the influence of regular religious worship should be well understood and duly appreciated, individuals of all classes of the insane have been permitted to attend our religious exercises, who would give a pledge to observe suitable quiet and order in the place, and it has been truly interesting and curious to see how faithfully the pledge has been observed.

The religious melancholic has in no case been deprived of the privilege of attending worship when desired, and we have learned a fact no less interesting than important, that the same judicious discourse and religious exercise will calm the excited, awaken serious contemplation in the giddy and unreflecting mind, and at the same time inspire confidence and awaken hope in the depressed and melancholy. Very few, if any, have been unfavorably affected by the exposition of religious truth in the judicious but forcible manner in which it has usually been given in our chapel. All our former views on this subject have been more than realized by this year's experience of religious worship. The principles of Christianity are eminently calculated to excite rational contemplation, calm the perturbed feelings, and encourage the faithless and desponding in the way of duty.



In the condition of composure, a motive of self-control can generally be found to influence the insane; he can be thrown upon his responsibility and be made to feel that he is accountable for his conduct as well as others; and, even when he is excited and agitated by the illusions and impulses of his disease, who can say, that the fervent devotion of his soul poured out in prayer to his Heavenly Father, may not be heard with complacency, and accepted with approbation at the Throne of Grace?

It will be seen, by our augmented numbers, as well as by the extent of our operations in the various departments of industry, that the duties and labors of the Hospital have increased every year since its establishment. No small item of responsibility and care has been added by the introduction of *religious worship* on the Sabbath.

While this report is being written we have more patients in the institution than there are rooms for their accommodation. In the course of the last year a number of patients have been discharged for want of room and more than *ninety* applications have been rejected from the same cause. Such a crowded state of the Hospital is attended with much embarrassment when the press of patients from the courts is as great as it has recently been.

In the supervision of the establishment, I have derived every aid from my associates which it has been in their power to render; and I take great pleasure in bearing testimony to the fidelity of all who have had a duty to perform in any department.

The success which has hitherto attended our efforts in the management of the institution, prompts us to continue our exertions to sustain its reputation and render it still worthy of the patronage of the government and the confidence of the public.

SAMUEL B. WOODWARD.

*State Lunatic Hospital, December, 1838.*

## TREASURER'S REPORT.

*To His Excellency EDWARD EVERETT, Governor, and to the Honorable  
Executive Council of the Commonwealth of Massachusetts:*

The Treasurer of the State Lunatic Hospital respectfully presents  
his Sixth Annual Report.

The Treasurer charges himself with Receipts from December 1,  
1837, to November 30, 1838, inclusive, as follows:

From the State Treasury, - - -	\$8,000 00
From cities, towns and individuals, including credits on sundry bills for flour barrels, grease, ashes, old iron, &c. - -	21,550 74
Balance to next account, - - -	530 01
	<hr/> \$30,080 75

He credits himself as follows:

For balance of last account, - -	1341 35
" payments for improvements and repairs, -	1108 98
" " salaries, wages and labor, -	6513 99
" " furniture and bedding, -	1712 28
" " clothes, linen, &c. -	2008 29
" " fuel and lights, -	2692 41
" " provisions and groceries, -	12,760 57
" " medical supplies, -	718 00
" " hay and straw, -	340 59
" " miscellaneous, -	886 99
	<hr/> 30,080 75

Deducting the balance of last account, the cost of supporting the institution is - -	<hr/> \$28,739 40
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The item of clothing, linen, &c. includes the cost of most of the  
stock for the shoe shop, which has been put in operation since the last  
report.

The payments for Salaries, Wages and Labor are distributed as in the following Table. The Gratuities mentioned are given, by authority of the Trustees, as a bounty upon fidelity and long service. The Table embraces the names of all who, within the year, were regularly employed in the Hospital, and paid by the Treasurer. Some were there but a short time, as the amount paid them shows. Those not in the employ of the Institution on the first of December, are so designated and are marked with an asterisk.

NAMES.	SERVICE.	COMPENSATION.	AMT. PAID.	REMARKS.
*Betsey Ewell,	Chambermaid,	Board and \$1 25 per week.	\$5 50	Not now employed.
*Mary A. Conkey,	Attendant,	do do 16 00 per month,	54 13	\$5 Gratuity. Not now employed.
*Daniel G. Blackmer,	do	do do 2 00 per week,	194 50	\$5 do do do
*Mrs. Blackmer,	do	do do 15 00 per month,	148 20	\$5 do do do
*Jonathan L. Preston,	Mechanic,	do do 250 00 per year,	63 91	\$5 do do do
*Ell D. Bond,	Attendant,	do do 2 00 per week,	11 26	Not now employed.
*Jane M. Howe,	Chambermaid,	do do 1 25 per week,	10 80	do do do
*Julia L. Drury,	Attendant,	do do 14 00 per month,	29 84	do do do
*James Bliss,	Overseers of Incurable De-	do do 350 00 per annum,	369 50	\$5 Gratuity.
Samuel Colby,	partment—North Wing,	do do 350 00 per annum,	358 42	\$5 do do do
*Mrs. Colby,	Overseers of Incurable De-	do do 2 00 per week,	93 84	\$5 do do do
Samuel Rice,	partment—South Wing,	do do 2 00 per week,	86 14	\$5 do do do
*Mrs. Rice,	Attendant,	do do 15 00 per month,	283 20	Not now employed.
Hannah W. Holman,	In kitchen,	do do 2 00 per week,	101 98	do do for 2 years.
*Elizabeth Anderson,	Attendant,	do do 2 00 per week,	71 58	\$5 do do do
William Conkey,	do	do do 2 00 per week,	107 28	\$5 do do do
*Mrs. Conkey,	Tailoress,	do do 2 00 per week,	145 95	Not now employed.
Seraphina Chaffin,	In kitchen,	do do 15 00 per month,	270 68	\$5 Gratuity.
*Susan G. Smith,	Washerwoman,	do do 2 00 per week,		
Catherine Raynes,	Mechanic,	do do 2 00 per week,		
*Ira Prouty,	Attendant,	do do 15 00 per month,		
John T. Mirick,	do	do do 2 00 per week,		
*Mrs. Mirick,				

## TREASURER'S REPORT--Continued.

NAMES.	SERVICE.	COMPENSATION.	AMT. PAID.	REMARKS.
James B. Billings, }	Attendant, }	Board and \$15 00 per month, }	\$258 14	\$8 Gratuity.
Mrs. Billings, }	do }	do do 2 00 per week, }	156 17	\$8 Gratuity. Not now employed.
*George Sessions, -	do -	do do 15 00 per month, -	77 42	\$5 do
Mary May, -	Chambermaid, -	do do 1 50 per week, -	151 79	\$5 do
Eunice Drury, -	Housekeeper, -	do do 3 00 per week, -	103 84	\$5 do
Betsy Allen, -	Attendant, -	do do 2 00 per week, -	86 03	\$5 do
Harriet N. Howe, -	Table Girl, -	do do 1 50 per week, -	94 58	\$5 do
Theoda M. Bartlett, -	Attendant, -	do do 2 00 per week, -	78 44	\$5 do
*Mary Kelly, -	Cook, -	do do 2 00 per week, -	59 92	\$5 do
*Perris Goldthwait, -	Attendant, -	do do 2 00 per week, -	282 67	\$8 do
Moore M. Chaffin, }	Fanner, -	do do 15 00 per month, }	209 82	\$8 do
Mrs. Chaffin, }	In kitchen, }	do do 2 00 per week, }	73 42	Not now employed.
Rufus Hayward, -	Shoemaker, -	do do 2 00 per month, -	109 28	\$5 Gratuity.
Samuel Preston, -	Attendant, -	do do 14 00 per month, -	125 54	Not now employed.
*Mary G. Mirick, -	do -	do do 2 00 per week, -	86 56	Not now employed.
Sarah Jennings, -	do -	do do 2 00 per week, -	38 58	Not now employed.
*Horace Mirick, -	do -	do do 15 00 per month, -	162 56	\$8 Gratuity.
Hannah Baker, -	do -	do do 15 00 per month, -	186 21	\$8 do
*A. Maria Drury, -	In kitchen, -	do do 15 00 per month, -	183 08	\$8 do
Francis W. Converse, -	Attendant, -	do do 10 00 per month, -	39 77	Not now employed.
Harrison W. Babbitt, -	do -	do do 2 00 per month, -	83 71	\$8 Gratuity.
William H. Blackmer, -	do -	do do 2 00 per month, -	60 56	\$8 do
*Aaron Locke, -	Fireman, -	do do 2 00 per week, -	56 56	Not now employed.
Mehitable Farwell, -	Attendant, -	do do 14 00 per month, -	112 11	\$8 do
Clarissa Chaffin, -	Seamstress, -	do do 2 00 per week, -		Not now employed.
Harriet H. Cary, -	Attendant, -	do do 2 00 per week, -		
William R. Lincoln, -	do -	do do 2 00 per week, -		

Attendant,	Board and \$14	per month, per week, per week, per week, per week, per week, per week, per week,	Not now employed.
Julius M. Converse,	do	112 70	Not now employed.
*Caroline W. Drury,	do	13 44	Not now employed.
*Lucy Ann Basson,	do	31 44	Not now employed.
*Lucy Ann Blackmer,	do	39 61	Not now employed.
*Esther L. Phelps,	do	25 29	Not now employed.
*Mary Ann Ironer,	do	18 21	Not now employed.
*Ann Chase,	do	37 71	Not now employed.
*Dolly P. Howe,	do	70 00	Not now employed.
*Lucretia Wood,	do	64 37	Not now employed.
*William A. Hudson,	do	14 28	Not now employed.
*Louisa Bailey,	do	28 46	Not now employed.
Lyman Thompson,	do	65 76	Not now employed.
Hollis Chaffin,	do	20 00	Not now employed.
Mrs. Chaffin,	do	14 75	Not now employed.
Elizabeth Bruce,	do	7 50	Not now employed.
*Eunice Howe,	do	5939 93	Not now employed.
*Agnes Johnson,	do	100 00	Not now employed.
A. D. Foster, Treasurer, \$100 per annum,	do	480 36	Not now employed.
Labor by those not regularly employed at the Hospital, including payments for supplying the Chapel pulpit,	do	6513 29	Not now employed.

A. D. Foster, Treasurer, \$100 per annum,  
Labor by those not regularly employed at the Hospital, including payments for supplying  
the Chapel pulpit,

*Provisions and Groceries include*

Apples, pears, berries, oranges, lemons, raisins, apple-sauce, &c.	-	-	-	-	\$425 81 1-2
Spices, salt, and small groceries,	-	-	-	-	191 64
Soap,	-	-	-	-	279 78
Honey,	-	-	13 lbs.	-	11 68
Vinegar,	-	-	7 barrels 36 gallons,	-	84 92
Milk,	-	-	4031 quarts,	-	204 29
Butter,	-	-	8538 lbs.	-	1828 57
Cheese,	-	-	7973 lbs. 15 oz.	-	799 13
Beans,	-	-	33 bushels,	-	55 30
Eggs,	-	-	264 6-12 dozen,	-	53 22
Peas,	-	-	12 1-4 bushels,	-	23 44
Cabbages,	-	-	44	-	2 50
Turnips,	-	-	54 bushels,	-	19 95
Potatoes,	-	-	1073 bushels,	-	411 06
Corn,	-	-	952 bushels,	-	1041 38
Rye,	-	-	164 1-2 bushels,	-	115 88
Oats,	-	-	275 bushels,	-	144 58
Biscuit,	-	-	-	-	151 56
Rice,	-	-	1933 1-2 lbs.	-	99 17
Flour,	-	-	231 1-2 barrels,	-	2065 34
Tea,	-	-	680 lbs.	-	207 26
Coffee,	-	-	1437 lbs.	-	154 03
Brown sugar,	-	-	9349 3-4 lbs.	-	832 97
Loaf sugar,	-	-	567 12-16 lbs.	-	86 93
Molasses,	-	-	607 gallons,	-	257 28
Poultry,	-	-	415 1-2 lbs.	-	58 31
Fresh fish,	-	-	2878 1-2 lbs. (20 shad, 8 lobsters.)	-	104 24
Salt fish,	-	-	4804 lbs.	-	180 06
Mackerel,	-	-	4 3-4 bbls. 102 lbs.	-	61 24 1-2
Salmon,	-	-	1 bbl. 93 3-4 lbs.	-	28 61
Ham,	-	-	238 lbs.	-	33 61
Sausages,	-	-	184 1-2 lbs.	-	26 90
Mutton and Lamb,	-	-	1944 1-2 lbs.	-	189 36
Pork,	-	-	2252 lbs.	-	253 19
Beef,	-	-	22,091 lbs.	-	1658 09

Salt beef,	-	5 bbls. 544 1-2 lbs.	75 76
Salt Pork,	-	8 bbls.	214 13
Veal,	-	3531 lbs.	277 12
Liver,	-		1 06
			<hr/>
			\$12,760 57

*Fuel and Lights include*

Wood,	-	496 cords, 10 inches,	2208 66
Charcoal,	-	1214 2-3 bushels,	130 26
Anthracite,	-	4 tons 2 qrs. 22 lbs.	53 63
Oil,	-	263 1-2 gallons,	224 23
Wicking, and 82 lbs. of candles,	-		15 63
			<hr/>
			\$2692 41

*Miscellaneous includes*

*Money paid to patients when discharged, or advanced to them and charged in their accounts,*

	-	-	183 47
Expenses of pursuing elopers,	-	-	64 57*
Expenses of Trustees' visits,	-	-	96 86
Funeral expenses,	-	-	115 00
Postage,	-	-	45 24
Sleigh, \$40 50—three cows, \$140,	-	-	180 50
Books, periodicals, stationary, printing regulations, &c.	-	-	109 35
Sundries,	-	-	92 00
			<hr/>
			\$686 99

\* Including \$50 for an escape of a preceding year.

The accounts, of more than one year's standing, on the first of January in each year, are, by direction of the Trustees, placed in the hands of the Attorney for the Middle District for examination, and, if practicable, for collection. Very few, however, which are collectable, require his care. Several remain in his hands, and more will be placed there in the ensuing month.

The receipts from towns and individuals, during the past year, have been larger, and the expenditures less, than the estimates of the last report.

Of the appropriation made by the Legislature at its last session, \$4000 remained in the treasury of the Commonwealth on the first inst. The Treasurer has since received it, and holds the unexpended balance in his hands. The receipts will probably equal those of the past, in the year ensuing; but, with the amount on hand, will not be sufficient for the expenditures. The Treasurer would propose that an appropriation of \$8000 should be made this year as in the two last years.

A. D. FOSTER,

*Treasurer of the State Lunatic Hospital.*

WORCESTER, Dec. 1838.



SENATE.....

.....No. 9.

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ANNUAL REPORT

OF THE

ADJUTANT GENERAL.

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ADJUTANT GENERAL'S OFFICE, }  
Boston, Dec. 31, 1838. }

*His Excellency* EDWARD EVERETT :

SIR :—The annual returns of the Militia, as made to this office, for the year 1838, are exceedingly imperfect, and exhibit much indifference and incompetency on the part of many of the officers, and a reckless and unsoldier-like spirit in a large portion of the non-commissioned officers and privates. Indeed, the Militia Institution appears to be fast falling into disrepute ; and unless something shall be speedily done to preserve this important arm of defence, it will soon become a useless appendage of the government. Much complaint is made against the existing Militia Laws, but it is impossible that the Militia can be improved under any law, however wisely framed, unless officers possessing more talent, experience, information and military pride, than most of those now in commission, are selected,—for, if they cannot, or will not, faithfully perform their duty now, when so little is required of them, what reason is there for presuming that they will do any better when their duties shall be increased ? Many of the present officers are entirely destitute of military tact and intelligence, and even the disposition to learn their duties.

From the manner in which the returns have been made, it is not practicable to give, separately, the force of the infantry, light-infantry, grenadiers and riflemen, in each regi-

#### 4      ADJUTANT GENERAL'S REPORT.      [Jan.

ment or battalion, although repeated orders and instructions have been issued from this office, requiring the returns to be so made out as to enable the Adjutant General to do this. Some of the returns, in fact, appear to have been made without the least regard to accuracy, or any desire to conform to the orders and instructions before mentioned.

Several of the companies, it appears, were not called out for inspection in May last, and of the four hundred and ninety companies in the State, ONE HUNDRED AND SIXTY-THREE NEGLECTED TO MAKE ANY RETURN FOR 1838, viz.

In the 1 Div. 4 co's of inf'try

" 2 " 16 "	"	1 light inf,	2 artillery,	
" 3 " 45 "	"	2 "	1 "	4 riflemen.
" 4 " 12 "	"	1 "		
" 5 " 21 "	"			1 "
" 6 " 34 "	"	1 "		
" 7 " 18 "				
<hr/>		<hr/>	<hr/>	<hr/>
150	5	3	5	

In the above estimate is included fourteen entire regiments of infantry and two battalions of artillery, from whom no returns for 1838 were received by the Brigadier Generals. But in order to show the whole Militia force, as nearly as possible, the returns of 125 companies have been added, from former returns, by the returning officers, and those of the residue have been included from the best data in this office. The entire force of the Militia, for May, 1838, is therefore ascertained to be 46,354—divided thus :

Cavalry officers, non-com'd officers, musicians and	
privates,	438
Artillery, " " " " "	2,068
Infantry, light-infantry, grenadiers and riflemen,	43,848
	<hr/>
	46,354

*But very little attention appears to have been paid to the act of April 20th 1837, or to the General Order of March 20th, 1838, whereby the enrolled Militia was expected to have been greatly augmented, as will be seen in the report made to the Legislature on the 29th of March last.*

It also appears from the May returns, that there were about *five hundred vacancies* of general, field, staff and company officers, and that many of the companies are in a very disorganized condition, and positively refuse or neglect to choose suitable persons to office.

An abstract of the Annual Militia Returns is herewith transmitted, and also the return of the Quarter Master General's Department.

*I have the honor to be,*

**With the highest respect,**

**Your most ob't servant,**

**H. A. S. DEARBORN,**

*Adjutant General.*

## R E T U R N

*Of the Ordnance, Ordnance Stores, Muskets, Military Equipments, &c. &c. in the Quarter Master General's Department, exclusive of Gun Houses—1838.*

ARTICLES.	Deposited in		Total.
	Cambridge.	Boston.	
Artillery Harness, 15 sets for 4 horses each, . . . . .	15		15
Artillery Harness, double sets for 2 horses each, . . . . .		2	2
Artillery Swords, Scabbards, and Belts, each, . . . . .	176		176
Artillery Boots, . . . . .		1	1
“ Buckets, . . . . .	6	4	10
Axletrees, white oak, for gun carriages,	6	6	12
Axes, Broad, . . . . .	25		25
“ Narrow, . . . . .	66		66
Adzes, (copper,) . . . . .	1		1
Back and Belly Bands, each, . . . . .		54	54
Breechings, . . . . .		12	12
Bridles, . . . . .		5	5
Bricoles, . . . . .		97	97
Boarding Pikes, . . . . .	88	54	142
Bill Hooks, . . . . .	328		328
Beds for Howitzers, . . . . .	2		2
Cannon, brass, Field 12 Pds. . . . .		2	2

ARTICLES.	Deposited in		Total.
	Cambridge.	Boston.	
Cannon, brass, Field, 6 Pdra. . . .	12	2	14
“ “ “ 3 “ . . . .		8	8
“ iron, 32 “ . . . .	4		4
“ “ 24 “ . . . .	29		29
“ “ 18 “ . . . .	3		3
“ “ 12 “ . . . .	2		2
“ “ 9 “ . . . .	1		1
“ “ 6 “ . . . .		2	2
Carriages, (S. C. D.) 32 Pdra. . . .	2 <sup>2</sup> / <sub>2</sub>	2	4
“ (Fort) 32 “ . . . .	5		5
“ “ 24 “ . . . .	11		11
“ “ 18 “ . . . .	12		12
“ (Field,) 24 “ . . . .	1		1
“ “ 18 “ . . . .	8		8
“ “ 12 “ . . . .	2		2
“ “ 9 “ . . . .	3		3
“ “ 6 “ . . . .		6	6
“ “ 3 “ . . . .		8	8
Caissons, (from U. S.) . . . .	5		5
Cavalry Pistols, . . . .	180		180
“ Sabres, Scabbards and Belts, each, . . . .	209		209
Camp Kettles, . . . .	327	186	513
Cannisters, tin, (una.) . . . .		lot	lot
Canteens, (una.) . . . .	1627		1627
Case Shot Woods, . . . .		74	74

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ARTICLES.	Deposited in		Total.
	Cambridge.	Boston.	
Chain Traces, . . . .		264	264
Chest, Arm and Store, . . . .		2	2
Crow Bars, . . . .	17	1	18
Drums, . . . .		6	6
Drag Ropes, . . . .		7	7
Drying Pans, (copper,) . . . .		2	2
Epreuves, . . . .		5	5
Fifes, (uns.) . . . .		11	11
Flags, . . . .		2	2
Flannel, yds. . . .		24	24
Furnaces for heating Shot, . . . .	1		1
Fusee Machine, . . . .		1	1
" Woods, (empty,) . . . .	303	226	519
Gun Carriages for 6 pdrs., with imple- ments complete, from U. S. . . .	10		10
Gun Chains, . . . .		1	1
" Covers, . . . .		8	8
" Searchers, . . . .	1	1	2
Gunners' Belts, . . . .		3	3
" Callipers, (brass,) . . . .		1	1
" Quadrant, . . . .		1	1
Gin and Apparatus, . . . .	1		1
Halters, . . . .		1	1
Hames, pair, . . . .		26	26
Horse Collars, . . . .		10	10
Handsaws, . . . .		2	2



ARTICLES.	Deposited in		Total.
	Cambridge.	Boston.	
Hammers, . . . .	1	8	9
Hatchets, . . . .	(uns.) 7	2	9
Handspikes, . . . .	139	11	150
Hand Barrows, . . . .	117	1	118
Hoes, . . . .	2		2
Howitzers, brass, 5½ inch, . . . .	1		1
Ladles and Staves, 32 Pdrs. . . .		9	9
“ “ 24 “ . . . .		7	7
“ “ (ship,) 24 “ . . . .		1	1
“ “ “ 18 “ . . . .	1	18	19
“ “ “ 12 “ . . . .		6	6
“ “ “ 9 “ . . . .		3	3
Ladles and Worms, 6 “ . . . .		2	2
“ “ 3 “ . . . .		2	2
Linstocks, . . . .		3	3
Ladders, . . . .	4	1	5
Ladles, (iron,) . . . .		1	1
Lanterns, . . . .		2	2
Laths, . . . .		1	1
Lead, Sheet, lbs. . . .		600	600
Muskets and Bayonets, including 200 European, . . . .	16,806	386	17,192
Musket Bayonets, Scabbards and Belts, . . . .	1745	2216	3961
“ Wipers, . . . .	4808		4808
“ Screw Drivers, . . . .	4808		4808
“ Spare Flint Caps, . . . .	4808		4808

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ARTICLES.	Deposited in		Total.
	Cambridge.	Boston.	
Musket Spring Vices, . . .	480		480
" Ball Screws, . . .	480		480
" Cartridge Boxes and Belts, .	1802	2225	4027
" Ball Cartridges, (at Captain's Island,) . . .			274,458
" Balls, 18 to a lb. . .	32,400	190,800	223,200
" Flints, . . .		4000	4000
Marquee and Apparatus, . . .		1	1
Matchrope, yds. . .		529	529
Machine for rolling Bullets, . . .		1	1
" for Rocket Cases, . . .		1	1
Mess Pans, . . .		829	829
Moulds, Portfire, . . .		1	1
Mould, Bullet, 18 to a lb. . .		1	1
Moulds, Rocket, (wood,) . . .		3	3
" " (copper,) . . .		2	2
Padlocks, . . .		2	2
Pails, (common,) . . .		27	27
Pennants, . . .		8	8
Pestle and Mortar, (iron,) . . .		1	1
Pincers, . . .		10	10
Pick Axes, . . .	119		119
Plank, white oak, feet, . . .	2573	756	3329
" ash, feet, . . .		1216	1216
Polishing Wheel, . . .	1		1
Portfires, . . .		391	391

ARTICLES.	Deposited in		Total.
	Cambridge.	Boston.	
Portfire Cases, . . . .		2	2
“ Clippers, . . . .		4	4
“ Stocks, . . . .		3	3
Powder Horns, . . . .		5	5
“ Horn Straps, . . . .		18	18
“ Cart, . . . .		1	1
“ Measures, . . . .		5	5
Priming Wires, . . . .	2	36	38
Prolonges, . . . .		7	7
Rammers and Sponges, 32 Pdrs.		15	15
“ “ 24 “		14	14
“ “ (ship,) 24 “		5	5
“ “ 18 “	2	34	36
“ “ 12 “		23	23
“ “ 9 “	1	2	3
“ “ 6 “		8	8
“ “ 3 “		2	2
Rakes, (iron,) . . . .	3		3
Rifles, . . . .	260		260
Rifle Pouches, Flasks and Belts, each,	260		260
Shot, (round,) 24 Pdrs. . . .	1628		1628
“ “ 6 “ . . . .		70	70
“ “ 3 “ . . . .		309	309
“ (strap'd,) 24 “ . . . .	1616		1616
“ (case,) 24 “ . . . .	116	50	166
“ “ 18 “ . . . .		308	308

# 12      ADJUTANT GENERAL'S REPORT.    [Jan.

ARTICLES.	Deposited in		Total.
	Cambridge.	Boston.	
Shot, (case,) 12 Pdrs. . . .		381	381
“ “ 9 “ . . . .		388	388
“ “ 6 “ . . . .		819	819
“ “ 4 “ . . . .		427	427
“ “ 3 “ . . . .		499	499
“ (grape,) 24 “ . . . .	48		48
“ “ 9 “ . . . .		48	48
“ (loose,) . . . .	66		66
“ (8 inch howitzers,) . . . .	12		12
Scale Beam and Weights, . . . .		1	1
Scales and Weights, (small,) . . . .		2	2
Shaft Straps, . . . .		10	10
Shot Gauges, (copper,) . . . .		6	6
Shovels, . . . .	319	1	320
“ (uns.) . . . .	36		36
Side Straps, . . . .		4	4
Spades, . . . .	79	2	81
“ (uns.) . . . .	15		15
Spreaders, . . . .		41	41
Sounding Rod, . . . .	1		1
Sling Cart and Apparatus, . . . .	1		1
Swingletrees, . . . .		11	11
Salt Petre, lbs. . . .	8640		8640
Tackle and Fall, . . . .		1	1
Tackle and Blocks, (iron,) . . . .		2	2
Tents, common, . . . .	715	30	745

ARTICLES.	Deposited in		Total.
	Cambridge.	Boston.	
Tents, Wall, . . . .		197	197
Tent Mallets, . . . .	482	316	798
" Pins, . . . .		2020	2020
" Poles, wall, . . . .	25	33	58
" " common, . . . .	436	203	639
" Buttons, . . . .	168	572	760
" Togles, . . . .	222	275	497
Thumb Stalls, . . . .		12	12
Tompions, . . . .		7	7
Tompion Straps, . . . .		1	1
Togles for Drag Ropes, . . . .		298	298
Triangle Shears, . . . .		1	1
Trumpets, (uns.) . . . .		9	9
Tube Boxes, . . . .		3	3
" Box Straps, . . . .		16	16
Tubes, filled, doz. . . .		49	49
" " " (uns.) . . . .		92	92
Tumbrils, . . . .	6	8	14
Tumbril Saddles, . . . .		12	12
Vices, . . . .	1	1	2
Wagons, Baggage, . . . .	6	1	7
Wheel-Barrows, (uns.) . . . .	15		15
Worms and Staves, 32 Pdrs. . . .		17	17
" " (ship) 24 " . . . .		18	18
" " 24 " . . . .		2	2
" " 12 " . . . .		8	8
" " 9 " . . . .		9	9

# 14      ADJUTANT GENERAL'S REPORT.    [Jan.

MAGAZINES.	Pine Island.	Captain's Island.	Pounds.
Powder, (Lady Johnson,)	18 casks, 90 lbs. ea.	129 casks, 90 lbs. ea.	13,230
	1   "   75   "	1   "   45   "	120
	1   "   40   "		40
Powder for Artillery Supplies, . . . . .			75
			13,465

ADJUTANT GENERAL'S OFFICE, Boston, Dec. 31, 1838.

I hereby certify, that the foregoing is a true Return.

H. A. S. DEARBORN, *Adj. and Adg Q. M. General.*

# Abstract of the Annual 1

	Major Generals.	Brigadier Generals.	Adjutant General.	Inspectors General.	Quarter Masters General.	Aids-de-Camp.	Brigade Majors.	Brigade Quarter Masters.	Divisions Inspectors and Qr. Masters.	Judge Advocates.	Colonels.
GENERAL STAFF,	7	13	1			23	14	44	14	7	
CAVALRY, - -											1
ARTILLERY, - -											3
INFANTRY, - -											
RIFLEMEN, -											
LT. INFANTRY, }											
GRENADIERS, }											42
AGGREGATE, -	7	13	1			23	14	14	14	7	46





*Statement of the number of Military Commissions and Discharges issued during the year 1838: also, the number of Officers in commission, and the number of vacancies existing, on the first day of January, 1839.*

	Major Generals.	Aids to Maj. Gen'ls.	Division Inspectors.	Div. Quart. Masters.	Judge Advocates.	Brigadier Generals.	Brigade Inspectors.	Aids to Brig. Gen'ls.	Brig. Qr. Masters.	Colonels.	Lieut. Colonels.	Majors.	Adjutants.	Quarter Masters.	Pay Masters.	Surgeons.	Surgeon's Mate.	Chaplains.	Captains.	Lieutenants.	Ensigns.	Cornets.	AGREGATES.
Commissions issued,	.	5	2	1	1	4	7	6	5	16	19	22	20	12	11	12	6	9	123	125	111	1	518
Discharges issued,	.	1	3	1	2	1	3	7	4	5	17	13	19	15	14	16	9	8	113	86	63	1	414
Remaining in Commission,	.	6	13	7	6	7	15	16	13	14	50	32	67	56	48	49	31	37	411	486	431	5	1876
Vacancies,	.	1	1	1	1	1	1	3	2	17	15	11	22	22	19	30	36	36	139	111	79		540

H. A. S. DEARBORN, *Adj. General.*



SENATE.....

.....No. 10.

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**M E M O R I A L**

**OF**

**H. G. OTIS, THOMAS H. PERKINS, JOHN PARKER,  
THOMAS DENNIE, NATHANIEL GODDARD,**

**AND**

**FORTY-EIGHT HUNDRED OTHERS,**

**ON THE SUBJECT OF THE**

**L I C E N S E L A W .**

*Presented by Thomas Motley.*

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## Commonwealth of Massachusetts.

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### MEMORIAL

To the Senate and House of Representatives, in General  
Court assembled :

WHEN a law has been enacted involving a new and dangerous principle in legislation, unequal in its operation, at best of extremely doubtful constitutional right, inefficient in promoting its professed end, and tending to endanger a good moral cause, by exciting opposition and stirring up division as to the means for promoting that cause, in communities where all good citizens were desirous to have a thorough reform in habit, and appetite effected by moral persuasion ; it becomes the duty, as well as right of the people to ask of their public agents, the repeal of such law.

For these general reasons, the undersigned respectfully ask for the repeal of the law passed at the last session, entitled " an act to *regulate* the sale of ardent spirits."

The title of that act, we submit, is a misnomer; for, instead of *regulating*, as all acts on this subject have hitherto assumed to do, it entirely *prohibits*, in any form or under any circumstances, to be used except in the arts or

#### 4 MEMORIAL OF H. G. OTIS & OTHERS. [Jan.

for medicine, the sale of any liquid, "part of which is spirituous," unless sold to the extent of fifteen gallons, to be all delivered and carried away at one time.

The question is not whether this law, if enforced, might or might not promote temperance, but whether, in its application to a particular description of property, and to the free agency of the citizen, it does not contravene all sound principles applicable to the possession, use, and enjoyment of property as a whole, and the exercise of plain personal and domestic rights that lie at the foundation of free government. It is not a question merely affecting morals, but the highest constitutional guarantees of property and individual liberty.

We ask for the repeal of that law, on these grounds, for the following summary of reasons.

*Because* it assumes to prescribe the particular uses to which property lawfully acquired shall be put; prohibiting a use lawful in itself;—thus following the article when sold to the home and the closet of the citizen who buys, and instituting a new system of espionage upon his domestic acts.

*Because* the paramount laws of Congress authorize the importation of this article of merchandise and its incorporation into the mass of property, all of which is under a regulation of commerce, which power is wholly ceded to the United States by the States, and therefore no State can prevent such importation and incorporation into the mass of property.

*Because* when so incorporated, it becomes like all other merchandise or chattels lawfully acquired, a part of that property which the constitution of this State secures to every citizen, and guarantees to him "the right of acquiring, possessing and protecting," and in the "enjoyment"

of which property, like all other, the constitution says "each individual has a right to be protected by society."

*Because* to proscribe, by a State law, any particular description of merchandise which under the United States' constitution becomes the lawful property of a citizen of this State, and withhold from it the right of "enjoyment" secured to *all* property, on the ground that excess in the use of it is injurious to society; is as manifestly an evasion of the guarantee of property rights, as it would be to deny the constitutional protection to jewels, plate, equipage, or any article of luxury, the excessive use of which, or its use at all by the poor, tends to demoralize and impoverish a community.

*Because* when the constitution of this State and of the United States were adopted, the chattel now deprived of the most essential quality of property by this law, was fully recognised as possessing all the immunities attaching to other property; and hence it being the subject of lawful property under the supreme law of the land, for a State to deprive it of value by denying to it sale and transfer, is an act of nullification of the laws of Congress rendering the right of importation useless by destroying the right to sell.

*Because*, by thus singling out and virtually confiscating one species of property which one portion of society believe it is unsafe for another portion to hold, except in large quantities, an arbitrary and despotic precedent will be established, by which the sacred right of acquiring, possessing, and enjoying property, may be narrowed down to the mere will of a majority of the Legislature for the time being, as to the kinds and quantities of property they may think it safe to let the citizens enjoy.

*Because* the arguments in support of this law, drawn

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from the legal suppression of gambling, lewdness, lottery tickets and drunkenness, are not applicable to a law which prohibits the sale from any and all citizens to others, of a specific chattel or property, imported and incorporated into the mass of property under the sanction of the paramount laws of the land.

*Because* it assumes that the sale of a particular article of property lawfully acquired and held, is a crime, and then only punishes the alleged offence when little, but legalizes it in large quantities, thus contravening the plainest principle of right, by punishing crime in the inverse ratio of quantity.

*Because* this law in effect confiscates property lawfully acquired, in the hands of the purchaser from the importer, and annuls the importation laws. Hence, if a State cannot directly prevent an article being imported and sold to its citizens in the first instance, would it not be unworthy a Legislature to adopt any evasive or cunning device to effect indirectly what the constitutional compact and the public faith due to the National Laws, prohibit being done directly.

*Because*, so long as the supreme law attaches to this article the right of being lawfully acquired, there can be no just distinction made as to enjoyment and use of this right, beyond its abuse and the mere regulations of police, which does not apply to all other property in the hands of the citizen.

*Because*, if the constitution of the United States does not prevent a State from passing any law, however arbitrary, for regulating its internal commerce between citizens, the constitution of the State protects the citizen in the enjoyment of all lawfully acquired property, and to abolish the sale of it, is in effect a law of confiscation, be-



cause the value of property depends on what it will bring, and to abolish its transfer, abolishes its value.

*Because* it is no answer to this objection to say that the transfer of this property is abolished only in given quantities, but allowed, unrestrained, in larger quantities ; which is only saying, that if a citizen is able to acquire a great deal of property, he shall be protected in the enjoyment of its use and sale, but if he is able to acquire only a little property, he shall be punished for selling it to another, and also the individual who sold it to him.

*Because* the constitution in securing the right to keep and bear arms, does not more directly involve the right to purchase and sell such arms, subject to only proper police regulations, than does the provision that each citizen shall be protected in the enjoyment of property, lawfully acquired, involve the right of purchase and sale. Hence if the sale of lawfully acquired property may be forbidden to prevent its tendency to abuse in bad hands, may not the Legislature, should the Non-resistance Societies demand it, prohibit the sale of fire-arms, in small quantities, lest they should be used in self-defence.

*Because* this law makes another innovation upon settled principles governing the rights of property, in prescribing for what particular purposes of domestic and private use, property shall be sold, or shall not be sold. It says that any quantity of the proscribed property may be sold, provided it is to be used in arts or medicine—that none shall be sold under a given quantity, to be used for any other purpose ; but that it may be sold, to any extent, and for any use, over a given quantity at a time.

*We ask for the repeal of this law then, as a dangerous precedent, affecting the rights of property. We ask for that repeal, further,*

*Because* it is a departure in principle from the uniform course of legislation upon this subject, under the constitution, which has been to regulate and not to prohibit, former laws being founded on a matter of police, to govern places of resort, preserve order, and punish actual violations of law.

*Because* it is a false principle in penal enactments to punish an act, not criminal in itself, on the ground that it tends to crime in another, while at the same time the law freely furnishes this tendency to crime in large quantities and only prohibits it in smaller.

*Because* the law is founded on another position as false as it is unjust, viz. that the moral sense is not as strong in the poor as in the rich, and that the former cannot, without restraining laws, resist temptations that may be safely presented to the latter, without injury to the common good ; thus assuming the odious distinction that the Legislature must take care of the poor, by guarding them against temptation, while the rich may be safely left to take care of themselves.

*Because* it is a libel on humanity to assume that the poor must be restrained in appetite and the rich indulged when in fact it is the industrious classes with small means who are trained by circumstances to self-denial and abstinence ; while the rich are more exposed, from habit and means, to excess in indulgence.

*Because* it is a sumptuary law against appetite, always odious in any form, but especially so in this case, where instead of restraining the luxury of the wealthy, it is aimed exclusively against the appetite of the poor, and freely indulges that of the rich ; thus infringing the spirit of that provision which declares that the Constitution was expressly framed "to provide for an equitable mode of making laws."

*Because* voluntary principle is the only safe reliance in a free government, for the support of religion and the advancement of moral causes ; and the professed object of this impossible law, viz : the suppression of appetite in a particular class, is as much beyond the reach of penal laws, as are the conscience and the internal will of man.

*Because* it is a law against moral agency, imposing punishment not upon any crime or offence, but upon an indulgence in appetite that may lead to crime.

*Because* the argument that Society has a right to prevent pauperism through intemperance its greatest source, no more justifies this law, than it would a law to punish any citizen who should keep or use the article at home ; and moreover this argument is a libel on a majority of the people, in assuming that the pauperism which is engendered by intemperance, is confined to those who cannot purchase fifteen gallons at a time, while the higher classes, who indulge at their tables and sideboards, are in no danger of becoming a public charge.

*Because* this law is an alarming precedent, tending to revive that series of arbitrary, bigoted and outrageous restraints upon personal freedom, domestic rights and private opinions, known as the blue-laws of the old Colonies ; and on this principle, whenever any sect in morals or dietetics happen to get a majority in the Legislature, they may pass laws to prohibit and punish all the indulgences they think proper to condemn.

*Because* there is obviously a dangerous tendency in the times to intemperate excess, in carrying out benevolent and noble objects of reform, which threatens to drive the sober and prudent and reflecting from all such useful as-

## 10 MEMORIAL OF H. G. OTIS & OTHERS. [J.]

sociations—wherefore we conceive it is peculiarly the duty of the Legislature not to countenance a doubtful and unwise measure of reform having this tendency, and which if persisted in, will encourage those who run into the wildest theories of moral restraint, to get up combinations and parties to force their particular creeds into the form of law.

For these, among numerous other reasons, we add ourselves to the calm good sense of the Representatives of the people. We pray them, as friends of temperance, not to endanger the healthful moral influences that will be carrying forward that cause as rapidly as the condition of society would admit. We ask them not to forget that though temperance is a noble cause, Liberty and Equal Rights are nobler. We assure them that this law must fail of its professed object, and will not succeed in restraining the appetite which will be indulged by combinations and evasions to a greater extent than without this ineffective attempt at restraint.

We ask them not to compel those who have uniformly sustained the moral cause of temperance and still desire its success, to rally against this measure in defence of a higher principle than temperance itself, the liberty of the citizen. Very many of the devoted, practical friends of Temperance, solemnly hold this law to be a violation of fundamental principles. They deny its right, they deny its constitutionality, they are satisfied of its inexpediency and that it will react, and retard the cause rather than advance it. They cannot consent to do wrong that good may possibly come. They will rather wait for natural causes to operate, than force the end they wish to accomplish, at the expense of reaction and the soundest and plainest principles of Equal Rights.

Wherefore we pray the Legislature to repeal this law, and thus remove from the Statute Book, the first act of a Sumptuary law, which has been placed there since the adoption of the Constitution.

(Signed)

HARRISON G. OTIS,

And Four Thousand Eight Hundred and Four others.



**SENATE.....**

**.....No. 11.**

---

**R E P O R T,**

**ON THE**

**PETITION OF MANNING LEONARD AND OTHERS,**

**INHABITANTS OF STURBRIDGE.**

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## P E T I T I O N .

*To the Honorable the Senate and House of Representatives of the State of Massachusetts in General Court assembled :*

The undersigned, citizens of the village of Westville and vicinity, in the southeasterly part of the town of Sturbridge, would respectfully represent, that their interests would be very materially promoted by having the territory upon which they reside, annexed to the adjoining town of Southbridge, as nearly all of their business, (excepting what is necessary to be done in the town in which one resides,) is transacted in the latter town, and the centre village of the same much nearer and easier of access than that of Sturbridge.

They, therefore, most earnestly petition your honorable body, that they may have all of the following territory annexed to the said town of Southbridge, viz.—Commencing at the most southern point of the same, at a monument westwardly of the residence of John Morse, the same being on the boundary line between said towns of Sturbridge and Southbridge, thence running north, twenty degrees east, six hundred and sixty-five rods, to a heap of stones on the farm of Stephen Newell, thence east, eighteen degrees north, four hundred and sixty-five rods, to a monument on the boundary line between said towns of Sturbridge and Southbridge ; thence southerly,

**4 STURBRIDGE AND SOUTHBRIDGE. [Jan.**

**following the boundary line of said towns to first named corner, containing about six hundred acres. And as in duty bound your petitioners will ever pray.**

**MANNING LEONARD, and 26 others.**

*Sturbridge, January, 1838.*

**Commonwealth of Massachusetts.**

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*To the Honorable Senate and House of Representatives,  
in General Court assembled :*

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The Committee of the last Legislature appointed on the  
Petition of Manning Leonard and others, to be set off  
from Sturbridge, and annexed to Southbridge, “to view  
the premises described in the Petition, to consider the  
expediency of the annexation prayed for, and make a  
report of their doings to the next Legislature,” have  
complied with their instructions, and ask leave to sub-  
mit the following

**R E P O R T :**

After giving due notice to the Petitioners, and to the  
Towns of Sturbridge and Southbridge, a majority of the  
Committee, (viz. Messrs. Hudson and Allen,—Mr. Wal-  
cott being detained by sickness in his family,) met at the  
public house in Southbridge, on Wednesday the 22d of  
August, instant. The Petitioners and the Town of Stur-

## 6 STURBRIDGE AND SOUTHBRIDGE. [Ja

bridge appeared by counsel ; the Town of Southbridge though served with a notice, did not appear. The Committee, in company with the parties, viewed the premises described in the Petition, and passed over the roads leading from the premises to the Towns of Sturbridge and Southbridge respectively, and heard the parties to their full satisfaction. There was but little discrepancy in the statements or evidence of the respective parties, and every thing was conducted in the spirit of liberality. The Petitioners presented their case in a fair and candid manner, and the respondents, viz., the Town of Sturbridge opposed the prayer of the Petition with a manly and magnanimous spirit. We make this statement because it is due to the parties, to say that there appears to be nothing like hostility or ill feeling existing between them ; and during the hearing they manifested none of that personal animosity which too often creeps into such controversies.

The territory embraced in the Petition contains six hundred acres of land of rather a poor quality, and, at the time of the hearing, a population of one hundred and eighty-one persons. There were at that time living on the territory thirty-three families, about one-half of which were permanent, the other half transient. There are twenty-two dwelling-houses of all kinds, one school-house, one small store, one factory, and one grist-mill, on the premises. All the property covered by the Petition would stand in the Sturbridge valuation at from thirty-two to thirty-three thousand dollars, and would pay in taxes of all kinds to the Town of Sturbridge, from one to two hundred dollars annually.

The principal part of the population and of the property is in the Village of Westville, situated in a bend of the Quinnebaug River, near the bridge, marked A., on the

**subjoined plan.** The distance from this Village, measuring from the Town-line on the centre of the bridge, to Sturbridge is two miles two hundred and eighty rods, and to Southbridge one mile two hundred and eighty-six rods, so that the inhabitants of the Village are about a mile nearer to Southbridge than to Sturbridge. There are five families situated north and west of the Village, who are included in the territory prayed to be set off, and who are themselves Petitioners; and those of them the most remote from the Village, and nearest to the centre of Sturbridge, are about the same distance from Sturbridge and Southbridge.

This territory is not only nearer to Southbridge than to Sturbridge, but the roads are much better to the former place, than to the latter. Westville is bounded north-westerly by a large swell of land, over which the roads to Sturbridge must pass, with an inclination in some places of some eight or nine degrees. Nor can the road from Westville to Sturbridge be materially improved without an expense altogether disproportionate to the amount of travel. There is now a new road in the progress of construction from Southbridge to Sturbridge; but this takes the travel from the village of Westville, and a deep ravine between the new road and the Village will prevent their availing themselves of that new facility. But the road from Westville to Southbridge is comparatively level, is much better wrought, and less obstructed by snow than the road to Sturbridge. It was stated by several of the witnesses, that take the year round, they could go from Westville to Southbridge and back again, as easy as they could go to Sturbridge.

It was also proved to the Committee, that the people of Westville were closely connected with Southbridge in

all their business transactions — that they did little or no business at the centre of Sturbridge ; that their letters generally came to Southbridge post-office, but there was a great inconvenience growing out of the fact, that they lived in one town, and had their letters sent to the post-office in another town. They were known to be inhabitants of Sturbridge, and it sometimes happens that their correspondents who did not know the fact that they did nearly all their business at Southbridge, would direct to them at Sturbridge, and letters thus directed would remain in the Sturbridge office for weeks, before they obtained them ; thereby subjecting them to inconvenience and sometimes to pecuniary loss ; which evils would be done away, if they could be annexed to Southbridge.

The Petitioners also alleged, and proved to the Committee, that there were several families living upon the Southbridge side of the river, which were now inconvenienced in relation to schools, which would be well con-vened, if the prayer of the petition should be granted. These families live from a mile and a quarter, to a mile and a half from the school-house in Southbridge, while they are not more than eighty rods from the school-house in Westville. This has induced them to send their children to the school in the village of Westville, though they had to pay their tuition. It was further alleged by the petitioners, that as the bridge over the Quinnebaug, at Westville, was owned half by one town and half by the other, there was sometimes a misunderstanding, and consequently a delay in repairing it ; and also that the water-power in the village was rendered less valuable by the fact, that the ponds and dams were located partly in one town and partly in another ; thereby exposing them to taxation in two different towns. It was further shown,

that a large share of the property in Westville, now belongs to Southbridge, and that if the prayer of the petition should be granted there would be no real estate lying within the territory, if we except a small fraction of an acre in a single case, that would be owned by people living in Sturbridge.

It was further alleged by the petitioners that all their associations were with the people of Southbridge; that they not only performed their secular business there, but there they met for religious worship, and when their earthly labors were over, they expected to be buried there by the graves, of their fathers.

The objections urged by the town of Sturbridge were, that it would render their town more ill-shapen than it was at present; that it would take three families from one of their smallest school districts, and thereby injure it; and that town lines ought not to be disturbed.

Upon this latter objection, they dwelt at some length. They maintained that the line was established by a Committee of the Legislature, that the towns acquiesced in it, and consequently the right had vested in Sturbridge, and this portion of her territory could not be taken from her and annexed to Southbridge in good faith.

The Committee, after a full hearing of the parties, had no difficulty in coming to the conclusion, that the prayer of the petitioners ought to be granted. They believe that it would be a great convenience to the petitioners, and a matter of indifference to the towns of Sturbridge and Southbridge. It would take from Sturbridge about 600 acres of her territory, but it would leave the town considerably larger than Southbridge would be after the annexation. Southbridge at the present time contains about 14,000 acres, and Sturbridge rising of 20,000. It would take from Sturbridge 180 inhabitants, but it



would leave the two towns nearer equal in population than [they now are. By the census of 1837, Sturbridge contained 2,004 inhabitants, and Southbridge 1,740. It would take from the town of Sturbridge some \$32,000 of taxable property, paying, perhaps 150 or 160 dollars, and would exempt them from the support of one school district, and half of the bridge over the Quinnebaug, together with several miles of road. It seemed to the Committee that if these roads were kept in mere passable repair, the town of Sturbridge would expend as much upon the territory in question, as the amount of taxes paid therein, and hence the annexation would be no pecuniary injury to the town of Sturbridge.

It would injure in a small degree, one school district in the town of Sturbridge, but for the interest of education this would be more than compensated by the convenience it would offer to a greater number of families, living on the Southbridge side of the river near Westville.

The Committee could see no sacredness in the town line in this case, which would not attach to all other town lines. The line was settled by a Committee of the Legislature, and settled wisely no doubt at the time, though this village was made a matter of controversy at that period. But there were reasons existing at that time, which do not exist at present. Some of the principal inhabitants at that time were opposed to being annexed to Southbridge. They were members of a Baptist Society which worshipped on the hill west of the territory. But since the town line was settled, that meeting-house has been taken down, and another erected in the centre of Sturbridge, and in fact this last mentioned house was, when the Committee were there, about to be removed two miles further west. So that all the



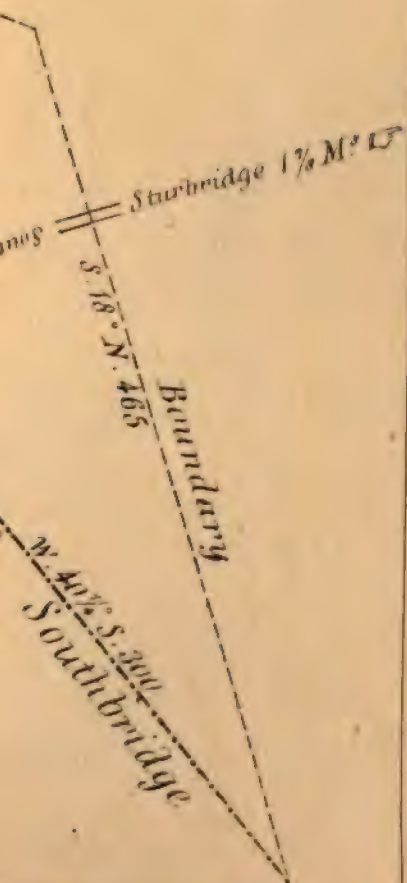
uses which led to the establishment of the  
ly, have ceased. Now the entire population  
of being annexed to the town of Southbridge.  
Committee are averse to altering town lines as a  
ng. But when the advantage to individuals  
reater than the disadvantage to the towns con-  
y think the lines should be changed. Believ-  
be a case of that character, *they unanimously*  
*that the prayer of the petitioners be granted.*

By order of the Committee,

CHARLES HUDSON, *Chairman.*

*ter, Aug. 27, 1838.*







## SENATE.....No. 12.

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Commonwealth of Massachusetts.

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### MESSAGE.

*and House of Representatives :*

Whereas, by the advice of the Council, for  
of the Legislature, a copy of a Communi-  
Agent of the Warren Bridge. The con-  
dge, as therein disclosed, appears to pre-  
probably within the contemplation of the  
the adoption of the Resolve of 16th April,  
suggested by the agent, gives rise to  
ions which the two Houses alone are  
cide.

EDWARD EVERETT.

*Number, 16th January, 1839.*

CHARLESTOWN, *Jan.* 12, 1839.

SIR:—In presenting the annual account of the expenses attending the support of the Warren Bridge, may be proper to state to your Excellency and the honorable Council, that a portion of the amount expended, say \$250 or \$300, was for repairs in the flooring of the bridge.

In five different places, during the past year, the flooring gave way; the timber composing it being entirely decayed. Fortunately no injury or loss happened except in one instance. By frequent examination under the bridge we have hitherto been able, (from indications of failure there to be seen,) to take up the top and put in new timbers, before the flooring should actually give way and fall, but it is almost certain, that at a period not very distant the passing must be stopped, and a great part, if not the whole of the flooring taken up, and a more permanent one substituted.

The enormous weight of the loads which daily pass the bridge, renders it probable that a number of timbers will ere long give way under the immense pressure, and loss of life and property, one or both, must inevitably take place.

A law was recently passed, regulating the weight of loads which might pass over bridges or causeways, limit-



to five tons, I think, exclusive of the weight of the wagon. If more than that is carried and the town or corporation are not liable for the damage that may be sustained. Eight or ten tons, the weight of enormous wagons, are daily passing across the bridge. Whether the fund of the bridge is to be drawn upon for any loss or damage that may happen, is a question for consideration. A large number of the travelling public are already well acquainted with the dangerous state of the flooring. Whether it would be advisable to apprise the whole public of the state of things, is also submitted. I presume that it would be to the owners of any of the enormous loads no question would arise, but in other cases, it might be cause of serious dispute who should

decide at the meetings of the board of directors as to the height of how high the surface of the bridge should be raised, and of what kind of timber the flooring should be made. A difference of opinion was manifested. Some thought that it was of little consequence what kind of timber was used, if it was only placed low enough for the wagons to reach it. It would then be pickled and last long; but no timber would last long placed above the surface. Others insisted that it should be raised as high as the surrounding bridges. Unfortunately, the opinion prevailed, and ten years have brought us to the other case two hundred would have been accomplished. I have preserved for inspection a number of the sticks taken out, so that persons desirous of

it can gratify their curiosity and be their own judges  
the risk they run in passing with such immense loads.

With great respect,

Your Excellency's ob't servant,

(Signed,) NATH'L AUSTIN,

*Agent for Warren Bridge.*

*His Excellency, Gov. EVERETT.*



SECOND

ANNUAL REPORT

OF THE

BOARD OF EDUCATION.

TOGETHER WITH THE

SECOND ANNUAL REPORT

OF THE

SECRETARY OF THE BOARD.

---

**Boston:**

JOHN AND WENTWORTH, STATE PRINTERS.

.....

1839.



**Wealth of Massachusetts.**

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LAWRENCE,  
*at of the Senate,*

ably to the provisions of the Act of 20th  
transmit herewith to the Legislature the  
Report of the Board of Education, to-  
Second Annual Report of the Secretary

ne honor to be,

th the highest respect,

Your obedient servant,

EDWARD EVERETT,

*Chairman of the Board of Education.*

n January, 1839.



## ND ANNUAL REPORT

OF THE

## D OF EDUCATION.

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Education, in conformity with the provisions of the Act of 20th April, 1837, establishing a system of public education, are required to submit to the Legislature their annual Report.

In the last Annual Report, it was stated, that, in order to give the Board specific powers to undertake measures for the improvement of the schools of the Commonwealth, the Board had been led to seek the voluntary co-operation of the teachers and friends of education; and, as the best mode of effecting this co-operation, had invited them to meet the Board, in convention in the several counties of the Commonwealth.

It was a matter of great satisfaction to the Board, that the Legislature should have indicated its approval of this course, by making it the duty of the Secretary, at the annual meeting in each county, of all such teachers, school officers, members of school Committees of the counties, and friends of education generally, as may be desired to assemble at the time and place designated by the Board for the purpose of education.

It has been performed agreeably to law, during the year, in all the counties of the State. The



meetings have been attended, in all cases, by the Secretary, and by those members of the Board whose other engagements permitted them to be present, and generally by a large number of the friends of education. An address on the most interesting topics connected with Education, on the measures recently adopted by the Legislature for its improvement, and on the defects and evils existing in our system of education and their remedies was delivered by the Secretary at each of these conventions, with general acceptance, and as the Board confidently believe with very happy effect. A more detailed account of these meetings does not fall directly within the province of the Board; but they beg leave to remark that they regard the county conventions, sanctioned by the Act of the Legislature of the 21st of April, 1838, likely to produce, by a gradual and steady operation, the most desirable effect upon the public mind. It is not to be expected, that at any one, or any number of the conventions, in any given year, decided results and measures of an imposing and brilliant character should be originated. The cause of education, in free governments, does not admit the production of such results, but of violent and transient impulses of public sentiment. But we may reasonably hope for the happiest effects from conventions of this character, held under the direct sanction of the Legislature, once in every year, and in every county of the Commonwealth, by an invitation addressed to all who feel an interest in the formation of the minds and hearts of the young, — an invitation transcending all the party lines, which divide the feelings and judgments of men on other important subjects. The meetings, conducted as they are believed, in all cases, have been in perfect harmony, have usually been atten

the most respected citizens in the several will prove, it is hoped, with each succeeding year more interesting ; and still more important, in the way of collecting and diffusing information on subjects of common concern.

The subject of schools for teachers has for several years occupied a considerable share of the attention of the Board of Education in the Commonwealth, and has, on several occasions, been favorably considered by the Senate and the House of Representatives. The subject of Education of the two Houses. The Board of Education, in their former Annual Report, presented the subject to the notice of the Legislature. In the last winter, a communication was addressed to the Secretary of the Board, to the President of the Senate and the Speaker of the House of Representatives, stating that the sum of ten thousand dollars had been placed at his disposal, by a friend of education, who offered that the Commonwealth would appropriate the sum ; the sum to be disbursed, under the authority of the Board of Education, in qualifying teachers in common schools. The donation was promptly accepted by the Legislature on the condition named, and the sum of ten thousand dollars was appropriated to the purpose, by a joint Resolve, approved on the 27th of March, 1838.

The present act of public and private liberality, the result of themselves clothed with a trust of equal importance and delicacy. It was evidently the object of the Legislature, that the practicability and usefulness of the system for the education of teachers should be ascertained by the test of experiment ; and the success of the experiment was likely to have a powerful influence on the public opinion in the Commonwealth, on this impor-

tant subject. The particular form, in which the experiment should be made and all the details of the institution or institutions to be established, were left to the discretion of the Board of Education. Neither the individual donation nor the Resolve of the Legislature was accompanied by any specifications on this head. This consideration imposed upon the Board the necessity of proceeding with caution. They felt it an incumbent duty not to hazard the success of this important measure, by any false step hastily taken in the outset. Feeling that institutions for the formation of teachers were relied upon by many intelligent friends of education, as the most important means of improving the character of our common schools,—while the mass of the community were perhaps waiting, with opinions yet undecided, the sure teaching of experience on this subject,—the Board felt that more than usual responsibility rested upon them, for a cautious application of the fund placed at their disposal.

This course was rendered still more necessary, by the want of previously established institutions of the kind in this country, which might serve as a guide. Attempts have been made, it is understood, with considerable success in a sister State, to connect some provision for the formation of teachers, with regular Academical Institutions; but the Board are not aware that Normal schools, properly so called, have as yet been established in any part of the Union. They exist in great numbers in those parts of Europe, where the greatest attention has been paid to the subject of education, and they are regarded as highly important parts of the system of public instruction; but the condition of our country differs so greatly from that of Europe, in reference to the demand for teachers, and their compensation,—to the resources for



public institutions and to the authorities, are to be established, that it rarely is practicable, to any great extent, the details of Endowments. It is not often either possible or more than derive useful hints from their the organization or modifications of ours. The first question that presented itself for the consideration of the Board, was, whether the whole sum at disposal should be expended upon a single institution or whether more than one institution should be maintained at the same time, in different parts of the Commonwealth. After mature deliberation, the latter was decided upon. Although, as has been already stated, the terms of the Resolve contained no limitation on the Board in this or any other respect, yet it was understood that the Legislature, in the language employed, indicated a preference to the most extensive system which the nature of the case, and the means at command admitted. The fund was to be "expended in the purchase of teachers for the common schools of Massachusetts." The Legislature contemplated the establishment of a single institution,—of one Normal School. It was supposed that such a purpose would have been more apparent by some terms of limitation in the Resolve. The Board, however, whether considered that the sum of money at the disposal of the Board, though reflecting the greatest public and private munificence by which it was provided, was evidently not to be regarded as a permanent endowment. No authority was given for its investment. No authority was given for its investment. No authority would it, if invested in buildings, fixtures, and an apparatus, have left a fund adequate for the support of teachers even for a single institution.

tion. It was at the same time, fully sufficient for establishment of several Normal schools in different parts of the Commonwealth, provided with means for carrying on a fair experiment in the education of teachers, for a sufficient length of time to bring the usefulness of such institutions to the test of experience. The Board had the means of knowing, that such a distribution of fund was approved by the individual, whose liberal vision had been accepted by the Legislature, as it appeared to them, as has been observed, to meet the view rather intimated than distinctly set forth, in the Resolutions of the General Court, and the report of the Commission on Education of the House of Representatives, from which the Resolve originated.

It was accordingly decided by the Board to establish three or four Normal schools in different parts of the Commonwealth ; as soon as arrangements could be made for the purpose. It was supposed that the sum of twenty thousand dollars, with the assistance which might be expected from the friends of education, in a manner which will be presently spoken of, would be sufficient to put in operation and to sustain for three years, at least, a small number of Normal schools in different parts of the State, and thus bring fairly within the reach of the people the means of partaking their advantages and estimating their usefulness, with a view to the question of their adoption or rejection as a constituent part of the system of school education. The Board would have been glad to go further, and to make arrangements for establishing a Normal school in every county of the Commonwealth, but the funds at their disposal evidently made this impossible. It was their duty, on the one hand, to give to as large a portion of the people, as possible, on the

portunity of witnessing and trying the experiment at the same time not to fritter away the minute a distribution.

A school only be founded, in whatever part of the Commonwealth it were placed, it would be difficult to the major part of those of both sexes, who are desirous of enjoying its advantages. The young men and women who devote themselves, from the early part of life to the business of industry, who would be likely to seek the advantages of a school, would be somewhat deterred by the expense of a journey to a remote part of the State, and the inconvenience of a residence at a great distance. The effect of this would be unfavorable to the success of the experiment, which is to bring before the majority of the citizens of Massachusetts the advantages of institutions for the education of teachers, and to place it in such a light before the people, that they may be disposed to make provision in every part of the Commonwealth, for the means of qualifying teachers required for their common schools.

As to the objections to a single institution alluded to, and to the local jealousy, of which it may be the object, in those parts of the State where the place of its establishment, the Board felt that it might stake the entire success of the experiment on the result of one trial. In an institution of a novel kind, and of course not capable of being carried on with the momentum which exists in a system of established and familiar institutions, and enables to overcome the effects of temporary and local misadventure—the consequences of error at the outset would be permanent injury would be done to the



cause of education in this community, should the entire fund provided for this interesting purpose be exhausted upon one establishment, and should that fail from any mismanagement, to win the public confidence.

In avoiding these risks of a single establishment, it was deemed an object by the Board to secure the other manifest advantages of a plurality. Besides those already alluded to, the establishment of three, and if found practicable, of four schools, would effect another object of considerable importance. The Board soon ascertained that in some parts of the community, and by some of the friends of education, it was deemed advisable to make the commencement with a school for the instruction of female teachers. It was doubtful, however, whether the public at large would have been satisfied with the establishment of a single school exclusively for their qualification. A school exclusively for males would have been open to still more forcible objections of the same character;—and no experiment would probably have been deemed complete, which was limited to an establishment for either sex exclusively. How far it may be deemed expedient to establish schools where both sexes shall be admitted, must depend on public opinion in the section of the State where the school may be placed; and on this point the Board are unable as yet to form a definite opinion. Where no objection is made to the admission of both sexes, there will of course be a convenience in organizing the school on this principle.

As soon as it was generally understood, that a fund for the establishment of Normal schools had been placed at the disposition of the Board, considerable interest was manifested on the subject of their location; and wishes were early indicated in behalf of different places, that the

ted for this purpose. The first movement  
as made from the county of Plymouth. A  
able Committee of the convention of the  
cation, in that county, appeared before the  
r annual meeting in May, with a view to a  
this subject. At the same meeting, a con-  
e same subject was held by the Board with  
. Fiske, of Wrentham, since deceased, who  
ehalf of a portion of the citizens of that  
s of some arrangement, which might con-  
olishment of a Normal school with the Acad-  
tham. About the same time similar over-  
ade to the Board by a Committee of the  
ummer Academy, at Byfield, in the county  
t a subsequent period, more or less direct  
ave been made in behalf of Barre, South-  
ancaster in Worcester county, of Topsfield  
ty, of Concord and Lexington in Middle-  
hington in Hampshire, of New Salem and  
Franklin, and of Braintree in Norfolk.  
undant reason to conclude, that, in propor-  
blic attention should be called to the sub-  
ould be the same desire felt and expressed, for  
ment of Normal schools, in other parts of the  
th.

t but be gratifying to the Board of Educa-  
e these proofs of an extensive, and rapidly  
terest on this subject. It imposed upon  
r, the necessity of selecting between places,  
ground of geographical position, were equal-  
ous or nearly so. In this state of things it  
y the duty of the Board to select those  
ing regard to their proper distribution

throughout the Commonwealth,—for the establishment of the Normal schools, where the most liberal co-operation might be tendered, on the part of the citizen. They were led to think, from the opinions entertained and expressed by sanguine friends of the cause in various places, that some of the towns or counties would be disposed, so far to unite their efforts with those of the Board as to furnish buildings, and fixtures, and a fund towards current charges, provided the expenses of instruction were defrayed out of the means at the disposal of the Board. It was obvious that such a system of co-operation, between the friends of education and the Board, would be productive of the happiest effects. It would be secure to the schools to be organized the advantage of warm and vigilant local sympathy. The public, whose aid they had been in part established, would feel a greatly enhanced interest in their prosperity. It furnished the most unobjectionable ground of selection between different places, to which the attention of the Board was called; and what was of still greater consequence, it would enable the Board out of the means under their control, to establish a larger number of Normal schools, than would otherwise be practicable.

These reasons led the Board to bestow the most respectful consideration on the various overtures made them, and to allow all the time that was desired for those interested to consult their fellow-citizens and ascertain the extent to which co-operation might be expected. In one of the counties it was thought expedient by the friends of education, to take the sense of the people in the towns on the day of the general election, whether they would raise their proportion of the fund proposed. Committees of the Board have visited several towns, and



ch application has been made for the purpose of the premises which have been offered to be at the disposal of the Board, for the accommodation of a Normal school. Till these preliminary steps were taken, it was impossible to proceed to the decision of a school or schools.

At a meeting on the 28th December, having been present persons interested in the cause of education in the county of Middlesex, the offer of the premises was well fitted for the purpose, and of liberal contribution toward the current expenses of the school, it was determined to proceed forthwith to the establishment of a Normal school, for the education of teachers, in that place. The situation was as favorable as any one which could be selected, in the counties of Essex and Middlesex, in the northeastern section of the State. The advantages to be desired, of local situation, are manifested in the establishment on behalf of the citizens of the place, and the premises at the disposal of the Board are convenient and

regulations adopted by the Board for the schools established, it is proposed that candidates for admission should have attained the age of seventeen years, or sixteen if females, and be instructed, if admitted, to continue in the institution so long, for a period of three years. But presuming that this is a longer time than a greater part of candidates would be able to pass through school, it is designed to arrange a course of studies to occupy a year; at the end of which time a certificate of qualifications will be given to all who have merited it. A course of studies will be designed to effect

two objects. First, the attainment of a more thorough and systematic acquaintance with the branches usually taught in common schools, and an adequate foundation in other parts of knowledge highly useful to the skillful teacher; and, secondly, the art of imparting instruction to the youthful mind, which will be taught in principles, and illustrated by opportunity for practice, by the means of a model school. The course of instruction will accordingly embrace whatever is required by the statute to be taught in the common schools of Massachusetts (with the exception of the ancient languages,) and such subsidiary studies as are required in a Normal school, according to the foregoing view of its objects. The principles of Christian ethics and piety, common to the different sects of Christians, will be carefully inculcated; and a portion of Scripture will be daily read in all the Normal schools established by the Board.

It being made the duty of the Board, to submit to the Legislature an account of the manner, in which the moneys appropriated for qualifying teachers, have been expended, the Board would state, in conclusion of this part of this report, that no disbursements have as yet taken place for this object, nor has any thing been drawn from the treasury.

In the Report of the Secretary of the Board, bearing date January 1st, 1838, and communicated to the Legislature at the last session, the following remark is made: "Not a little inconvenience results from the fact that school committees are elected at the annual town meetings in spring, and are obliged to make their returns in October following. Their returns, therefore, cover but half the time of their continuance in office, while they cover half the time of the official existence of their pre-



is for the Legislature to say, whether there is any reason, why the time covered by these returns, should be coincident with their duration in office.”

With these suggestions, it was provided by the passage of a law passed 13th April, 1838, that the blanks, and the inquiries provided for by the law of the year 1837, and the time when the same should be returned into the office of the Secretary of the Board, shall hereafter be prescribed by the Board of Education. Supposing this authority to have been conferred on the Board, by the Legislature, for the specific purpose of providing a remedy for the inconvenience alluded to in the passage just cited from the Secretary’s report, the Board at their annual meeting in May last resolved, that the annual returns of the School Committees should be made on the first day of May in each year.

By this arrangement, the returns of each year will embrace the condition of the schools for the year, during which that Committee has been acting. The Board were, of course, aware, and they are now, that by the change of the time in making the returns, it would be impracticable to make the annual apportionment of the income of the school fund, at the close of the year of the present year. In consideration, however, of the convenience and usefulness of the change, and of the greatly increased value which it will give to the returns, it is a venture to hope that it will be generally approved by the community. The existing provisions of the law are, that the income of the school fund shall be paid over by the secretary and treasurer, and paid over to the towns on or before the first of January in each year, to the towns which are required to make the prescribed annual returns, on or before the first of the preceding November. The change in the

time of making the returns will require a modification of the law on this subject. It will be for the Legislature to decide, whether, in making provision for the apportionment of the income of the fund, on the basis of the returns to be made on or before the first day of May next, it will order the distribution of the additional half year's income, which will then have accrued. Should this be done, no loss will have resulted to the towns from the delay in the apportionment, except a delay of six months in the receipt of a year's dividend; and even this will in some measure be compensated by a six month's anticipation of one half of the dividend of the following year.

In the former annual report of the Board, some observations were made on the subject of school libraries. As far as the information possessed by the Board extends, scarce any of the districts of the Commonwealth have yet availed themselves of the authority granted by the act of 12th of April, 1837, to expend for this object, thirty dollars for the first year, and ten for each succeeding year. A confident hope, however, is entertained, that, in proportion as the attention of the districts is called to the subject, and as convenient editions of books well calculated for the purpose, are published, school libraries will begin to be objects of interest throughout the Commonwealth and ultimately be found in all the districts. The opinion was expressed last year, that the preparation of such collections, must be left to the enterprise of intelligent publishers, who, at the present reduced cost of printing, have it in their power, by the circulation of good books, at reasonable prices, to render an inestimable service to the public.

The Board have regarded the law of the 12th of April, 1837, as the necessary result of the school system

s, as it has existed from time immemorial. want of a regular provision for school libraries considered a serious defect in that system. il are our youth taught to read, if no facilities obtaining books? The keys of knowledge to him who has no access to the volumes to

Although it is certainly true, that no part is wholly deficient in valuable works of science, yet it must be freely confessed, they are in such plenty as could be desired. In the towns, there are social libraries. These, generally depend on the precarious support of subscriptions, and are, too many of them, in a declining state. They can, of necessity, be accessible only to that portion of the population who live near the place where they are deposited. They are kept up and supplied with a selection of new works daily issuing from the press, they are admitted to be blessings to the community.

On the 12th of April, 1837, the Legislature has put it the duty of every district in the Commonwealth to avail itself of this blessing; and the Board regard it as the best part of their duty,—to do whatever may be in their power to facilitate the execution of this law. In the various causes, it is supposed, which have hitherto prevented the districts from availing themselves of the aid to commence the formation of these libraries, is the difficulty of making the selection:—a difficulty of great magnitude, when but a small sum is to be expended and it is necessary to send to some distant place to supply of books. To remove this obstacle in the future, the Board of Education determined, at an early meeting of the present year, to recommend to some



respectable publishing house to issue from the press a collection of works as a common school library, to consist of two series ; the one adapted for the use of children, the other for a maturer class of readers. The proposal has been acceded to by Messrs. Marsh, Capen, & Lyon, of Boston. The enterprise is to be entirely at the expense and risk of the publishers, who agree to execute the works in a style, and to furnish them to those who may choose to become purchasers, at a rate, to be approved by the Board, and which was ascertained to be the lowest, at which an arrangement could be made for its satisfactory execution. Each book in the series is to be submitted to the inspection of every member of the Board, and no work to be recommended, but on their unanimous approval. Such a recommendation, it was believed, would furnish a sufficient assurance to the public, that a sacred adherence would be had to the principle, which is embodied in the Legislation of the Commonwealth, on the subject of school books, and which provides that "school committees shall never direct to be purchased, or used in any of the town schools, any books, which are calculated to favor the tenets of any particular sect of Christians."

It will remain entirely optional, with the school districts, in availing themselves of the authority conferred by the Act of 12th of April, 1837, whether they will purchase the books recommended by the Board. It is by the law left with the discretion of the districts, what rules and regulations may be adopted for establishing and maintaining the libraries authorised to be formed ; and the Board have as little inclination as right to encroach on the exercise of this discretion. It is their purpose only to assist and encourage the publishers in the selection and publication of a series of volumes, well adapted

posed, to consist of a portion of the most  
ks in science and literature, with which our  
riched, executed in a style, and afforded at  
a will put them generally within the reach  
districts of the Commonwealth. The Board  
tisfaction in stating, that, in the preparation  
of the books to be published as a common  
, the publishers have been led to expect the  
many of the most distinguished writers of  
try.

ing their present report, the Board cannot  
their grateful sense of the attention, which  
the Legislature of the Commonwealth of  
, to the various suggestions made in their  
rt. At no former session of the General  
a greater interest been manifested in our  
the Board are persuaded that the enact-  
e last year, will result in their permanent  
. The school system of the Commonwealth  
use it is simple. The State provides that  
all maintain schools, and it organizes a cer-  
ery for their establishment and supervision.  
s machinery is in the hands of the school

On their fidelity, intelligence, and zeal,  
ends whether the schools prosper. In those  
districts where the committees are composed  
, active, and patriotic citizens, teachers are  
ompetent, school-houses are kept in repair,  
g generation grows up under all the advan-  
cation, which an anxious parent can desire  
child. Where the reverse is the case, the  
falls into disorder and decay. The powers  
Board of Education were wisely of a re-

commendatory character. Among the objects which first engaged their attention, were the organization and duties of school Committees. The Act of 13th April, 1835, remedies the greatest of the formerly existing evils, provides that the official year of the Committee shall coincide with that of their returns,—requires that they shall make an annual report in open town-meeting,—shall keep a record of their proceedings to be transmitted to their successors,—and authorizes a moderate compensation for their labors. With these wise provisions of law, every thing else must be left to the public spirit and Christian zeal of the citizens who assume this important trust.

In conclusion, the Board would express their strong reliance on the wisdom of the Legislature and the intelligence of the people, to continue that favorable regard to the cause of education, which has in all former times been the glory and strength of the Commonwealth. Situated at one extremity of the Union, and occupying but an inconsiderable spot on its surface, what is it that has given to Massachusetts a name and a praise in the land? The Board know of nothing, under Providence, but the principles and institutions of our fathers;—and among them, as far as mere human influences are concerned, pre-eminently our common schools. With the lapse of time and the progress of events, our importance in all physical relations,—such as territory, material resources, and numbers, is daily growing proportionably less. Of the new States in the West, among whose first settlers within the memory of man were some of our own adventurous citizens, one already greatly outnumbers our population our ancient and venerable Commonwealth. It is doubly incumbent upon us to look well to the source

and moral well-being, and see to it that the relative rank of the Commonwealth in wealth, she is determined not to sink to a degraded place in the scale of mental

EDWARD EVERETT,  
GEORGE HULL,  
EMERSON DAVIS,  
EDMUND DWIGHT,  
GEORGE PUTNAM,  
ROBERT RANTOUL, Jr.  
THOMAS ROBBINS,  
JARED SPARKS,  
CHARLES HUDSON.

28th December, 1838.

At the meeting of the Board of Education, at the foregoing report was adopted, it was decided, to make immediate arrangements for the location of a Normal School, in the central portion of the State. Proposals had already been received from several towns, and a committee of the Board had visited them, with a view to a personal inquiry on the spot. The town of Barre was selected by various considerations of locality and convenience. Premises sufficient for the accommodation of a Normal School, were, by a vote of the town, placed at the disposal of the Board, and pecuniary aid toward the expenses, guaranteed on the part of individuals.



The Board, however, having considered that some further provisions for the accommodation of the school would be required, did not feel themselves warranted at their meeting, in a final decision. The subject was referred to a Committee of the Board, authorized to confer with the Committee of the citizens of Barre, with the understanding, that if the conditions deemed requisite by the Board were complied with, a Normal School should be established in that place. The conditions have been promptly acceded to; and immediate arrangements will be made for the organization of the school.

The Board have understood, that in the section of the State which would furnish the pupils of this institution, no objection would be made to the admission of both sexes. Should this opinion prove to be correct, the school will probably be organized on this principle.



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COND ANNUAL REPORT

OF THE

OF THE BOARD OF EDUCATION.

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## THE BOARD OF EDUCATION.

respectfully submit some account of my proceedings  
year, in discharging the duties of the office you have

I should deem it an encroachment upon the prov-  
ard to advert to such topics in the administration of  
as are equally as well known to the Board as to my-  
instance, as the measures they have taken for estab-  
Schools, for causing school libraries to be prepared,  
tion of the form and time for making the School Re-  
therefore, confine myself to such facts as have come  
ely within my own knowledge, and to the considera-  
by them.

past season, after having given seasonable notice by  
s to the school committee of each town in the Com-  
visited the fourteen counties in the State, and, at  
central places, have met such of the friends of Edu-  
to attend. At a majority of these meetings I have  
the presence and cooperation of one or more of the  
Board. Other distinguished citizens, who, for ma-  
received the fullest testimonials of the people's confi-  
n present, and have taken an active and most useful  
edings. Except in the three counties of Hampden,  
Essex, the conventions have been well attended by  
ees, teachers and other friends of Education. The  
tings has been occupied by statements, respecting  
the public schools, by discussions in regard to the  
ching, and by the delivery of one or more addresses.  
om facts ascertained during the last part of the year  
nunicated by me to the Board in the report of Jan.  
e Common School system of Massachusetts had fal-

len into a state of general unsoundness and debility ; that a great majority of the schoolhouses were not only ill-adapted to encourage mental effort, but, in many cases, were absolutely perilous to health and symmetrical growth of the children ; that the schools were under a sleepy supervision ; that many of the most intelligent and wealthy of our citizens had become estranged from their welfare, and that the teachers of the schools, although, with very few exceptions, persons of estimable character and of great private worth, yet in the absence of all opportunities to qualify themselves for the performance of the most difficult and delicate task, which, in the arrangements of Providence, is committed to human hands, were, necessarily, and therefore without fault of their own, deeply and widely deficient in the two indispensable prerequisites for their office, viz., a knowledge of the human mind, as the subject of improvement ; and a knowledge of the means best adapted wisely to unfold and direct its growing faculties. To expect, that a system, animated only by a feeble principle of life and that life in irregular action, could be restored once to health and vigor, would be a sure preparation for disappointment. It is now twenty years, since the absolute government of Prussia, under the impulse of self-preservation, entered upon the work of entirely remodelling their Common Schools, so as to give them comprehensiveness and an efficacy, which would embrace and educate every child in the kingdom. In this undertaking, high intelligence has been aided, at every step, by unlimited power ; and the work is but just completed ;—in some places and in some circumstances of detail, I believe, not yet completed. Their engine of reform is the command of the sovereign, enforced by penalties ; ours, is the intelligence of the people, stimulated by duty. Their plan has the advantage of efficiency and despatch, but it has this disadvantage, that what the ruler may decree to-day, his successor may revoke tomorrow ; ours has the disadvantage of slowness in execution, but the compensatory advantage of permanency, when accomplished. Besides, if our schools are voluntarily advanced, through the intelligence of the people, the agents themselves will be benefited almost as much as the objects. These considerations ought to satisfy those persons, who seem impatient of delay and who think that a Board of Education could reanimate our system in one, or even in a few years.



then, the description of the means to be employed in schools to a reasonable and practicable point of utility be confidently stated, that the efforts, which have in different places, have accomplished something already, are sure auguries of a speedier progression hereafter.

In this year, Nantucket was the first place visited. It contains almost 10,000 inhabitants. When there, the town, there was but one set of public schools for all

To them, only children over the age of six years were admitted, and no public provision existed for the education of

During the last year, the town has established two schools for small children, and also a school (as it is described in the statute,) for the benefit of all the inhabitants of the town. In the last, pupils are admitted on passing an examination in the primary, required to be taught in the middle or secondary schools. The organization, therefore, is now perfect. The small children are provided for, by themselves. This is an advantage, which can hardly be overestimated. For the purpose of preserving discipline in schools, composed of scholars of all ages, it is most necessary to practise a rigor of restraint and a discipline upon the small children, which is always injurious to the older scholars.

The youngest scholars are, constitutionally, most susceptible of discipline. Their proportion of brain and nervous system, compared with the body, is much the greatest. Their restlessness does not arise from volition, but from the involuntary impulses of nature. They are easily excited at the slightest touch; and they can no more help a shudder or a pulse at every sight and sound, than they can help a tear or a sigh arising with open eyes and ears. What aggravates the restlessness, is that they have nothing to do. At a time, when nature is more active, than at any other period of life, all the powers of mind and body is enforced. But when the heart beats and the blood flows, the signs of life cannot be repressed; and therefore, the steady working of nature's laws furnish the teacher with occasions for discipline. If it is tolerably irksome for any of the large scholars to sit for an hour, in a constrained posture, with hands unoccupied, and feet straight into vacancy, how much more intolerable is

it for the small ones? Hence the importance of having such gradation of schools, in every place, where it is practicable, as has been lately established in Nantucket. Another invaluable advantage of having three grades of schools is, that while it diminishes, at least one-half, the number of classes in each school, it increases the number in each class, and thus allows the teacher to devote more time to the recitations and to the oral instruction of his enlarged classes. Another point, of great importance to the schools, was well illustrated in the change at Nantucket. When I was there in 1837, a private school was in operation, kept by one of the most accomplished instructors in the State, and sustained at great expense to its patron. When the arrangement, above referred to, was made, this gentleman was employed by the town to keep the town school. The private school was, of course, given up; but he carried with him, into the town school, most of his former pupils. And he now educates many others, who could not afford the expense of the private school. Although, in such cases, the compensation of the teacher may not be quite as great, nominally, yet it will probably be worth as much; as he will receive it directly from the town, in regular instalments, and will have none of the trouble of collecting bills.

Within the last year, also, every schoolhouse in Nantucket has been provided with a good ventilator and with new and comfortable seats. This leaves little to be desired in that town, in regard to the places, where the processes of education are carried on. Competent teachers, fidelity in the committee, suitable school books, libraries and a good apparatus, and bringing *all* the children within the beneficent influences of the school, will complete the work.

For the town school, an extensive and valuable apparatus has been provided, and also some of a less costly description, for the primary schools. To accomplish these praiseworthy purposes, the town, last year, almost doubled its former appropriation.

Another highly gratifying indication of increased attention to the welfare of the schools, has been given by the city of Salem. A year ago, the schoolhouses in that city, were without ventilation, and many of them with such seats as excited vivid ideas of corporal punishment, and almost prompted one to ask the children, for what offence they had been committed. At an expense of about two

the seats in all the schoolhouses, except one, constructed, and provisions for ventilation have been made, that the effect in the quiet, attention and proficiency, was immediately manifested.

In other places, improvements of the same kind have been made to a less extent and in a part only of the houses. It is a mistake, however, to suppose, that nothing remains to be done in this important department of the system of public instruction. The cases mentioned are the slightest exceptions, common to the generality of the neglect. The urgent reasons for the neglect on schoolhouses, the last year, still continue. In the point of ventilation, so essential to the health, composition and elasticity of the pupils, most of the houses remain in a state; except indeed, that very undesirable change, which is brought about by time and the elements;—or such change as has resulted from stripping off the external covering of the house, on account of the want of fuel. The children must continue to breathe the air, and to sit upon seats, threatening structural derangements. Parents become satisfied, that a little money may well be expended to secure to their offspring, the blessings of sound health, intellectual cultivation, and a strong, quick-working mind.

A respectable physician, who, for several years, has attended to the results of bad internal arrangements and bad localities in schoolhouses, upon the health of the pupils, took measures, last summer, to ascertain with exactness, the relative sickness, suffered by the children, in a given period of the annual schools. The schools were selected on account of their proximity, being but a short distance from each other; they contained very nearly the same number of children, belonging to the same condition of life, and no *general* physical causes could be said to exist, which should have distinguished them from each other as to the health of the pupils. But one house was dry and well ventilated; the other damp, and so situated as to render ventilation impracticable. In the former, during a period of forty days, no scholars were absent, from sickness, to the amount in the latter, twenty days. In the latter, during the same period of time, for the same cause, nineteen children were absent, to an



amount in the whole of one hundred and forty-five days ;—that almost four times the number of children, and more than seven times the amount of sickness ; and the appearances of the children not thus detained by sickness, indicated a marked difference in their constitution as to health. On such a subject, where all the causes in operation may not be known, it would be unphilosophical to draw general conclusions, from a particular observation. No reason, however, can be divined, why this single result should not fairly represent the average of any given number of years. Similar results for successive years, must satisfy any one, respecting the true cause of such calamities ; if, indeed, any one can remain sceptical in regard to the connexion between good health and pure air.

The committee who take charge of the Primary Schools in the city of Boston, established, in the month of September last, a "Model School." To this school it is intended to devote an unusual share of attention. It is under the immediate supervision of gentlemen, intelligent and highly interested in its success. The object is to select the best books, to learn, as far as possible, the true periods of alternation between study and exercise for young children, and to improve upon existing processes for moral and intellectual training. When their plans are somewhat matured by observation and experience, it is their intention to bring the teachers of the other Primary Schools, (of which there are more than eighty in the city) in regular succession into this school, to familiarize them with what, ever, upon experiment, shall be found to succeed well. Although it cannot be doubted, that this enterprise, under the judicious management of the committee, will prove very beneficial ; yet it is hardly rational to anticipate, that it will supersede the necessity of a Normal School for the city.

I cannot doubt, that the Board will hear, with lively gratification, other evidence of an increased interest in this subject. Considering how inadequate to the wants of the whole community is the county meeting—annual only—on the subject of Education, it necessarily be, several of the county conventions appointed last year, and most respectable committees to prepare and deliver, or cause to be prepared and delivered, a lecture in the different towns of the respective counties ;—or, where towns were large, then, in differ



town. In pursuance of this excellent plan, such  
already been delivered, or lecturers are now engaged  
in the counties of Nantucket, Hampden, Hamp-  
Worcester, and to some extent in Essex.

At summer, too, a few gentlemen in the city of Bos-  
ton, to procure the delivery of a course of weekly  
lectures to the benefit of teachers in the city. This course com-  
menced in the middle of October last, and still continues. En-  
tirely voluntary and gratuitous labor, by gentlemen of  
the city, who have been, or are, members of the State and  
Universities, counsellors at law, physicians, clergymen of all  
denominations, experienced and long-approved teachers, and some  
popular writers in the State. All these intelligent and  
active men, who see, that future consequences can alone be  
secured, to present causes, are profoundly convinced,  
that the noble feelings, in this State and Country, are assiduous-  
observance of law and a reverence for justice, it will  
restrain adult passions from individual debasement  
and emotion. The course of a stream, which a thousand  
years ago, as it flows into the ocean, may be turned by  
a dam or fountain. Above, it will yield to the guidance of a  
higher power, its flood will sweep works and workmen away.

Other indications, that public opinion on this subject  
is moving in the right direction. More committees are inquiring  
into the qualifications of candidates for teaching, instead of taking  
them for granted. Persons, who had taught school a  
few years, have been set aside for incompetency in the elementary  
branches of the law, requiring committees to visit the schools, has  
been more served, than ever before ; and teachers are realizing  
the benefits of such visitations, in the encouragement and stimulus  
afforded to the pupils. Many teachers are more justly  
valued for the true elevation and responsibility of their vocation ;  
and by those high motives, whose prerogative it is to  
bring pleasure.

On the reverse side of this picture, however, it is my duty to  
show the twenty-nine rich and populous towns, bound by  
the law, to send a child to school, at least ten months in each year, "for the

benefit of all the inhabitants of the town," and which were reported last year, as violating this law, by non-compliance, only two, viz. Nantucket and Taunton, have since established the schools required. It will be recollected, that this class of towns takes precedence of almost all the others in wealth; that they expend a far less proportion of money, per scholar, for the support of public schools, than the poorer and more sparsely populated towns, while, at the same time, they expend a far greater proportion of money for private schools. At the rate of two in a year, it will take about fifteen years for all the towns in this class to comply with the law;—a length of probation, it is to be feared, which will tend to harden rather than reform the delinquents.

Sufficient time has not yet elapsed to allow the practical results of last winter's legislation to be developed. The law for the compensation of school committees was not enacted, until after the committees for the current year had been elected. The reasons, which in former years, had deterred so many competent men from accepting that meritorious office, still existed. The ensuing annual elections will show, how far the public will consent, that any man, incompetent for, or heartless in, the performance of this responsible duty, shall be entrusted with it and receive its compensation. No time has yet arrived, at which all school committees are to make to their respective towns a report, "designating particular improvements and defects in the methods or means of education, and stating such facts and suggestions in relation thereto, as in their opinion will best promote the interests and increase the usefulness of the schools." Great good will unquestionably result from each of these provisions.

The "Register," prescribed by the law of last winter, "to be faithfully kept, in all the town and district schools in the Commonwealth," has been almost universally, (one or two places only, so far as I have learned, undertaking to absolve themselves from a compliance with the law,) introduced into the schools, with excellent effect. Skilful teachers find it a valuable auxiliary in securing greater regularity in the attendance of the scholars. By the Report of last year, it appeared, that "a portion of the children, dependent wholly upon the common schools, absented themselves from the

either permanently or occasionally, equal to a percentage of about one-third part of their whole number ; and deducted themselves from the summer schools, either permanently or occasionally, equal to a permanent absence of considerably more than two-fifths of their whole number." Thus after the expense of establishing, maintaining, and supervising schools has been incurred ; after the schools have been brought to the knowledge of the children ; the school itself is made to suffer in its results, by the inconstant attendance of the children, and the children suffer, in habits and character, from inconstant attendance at the school. Whatever diminishes this evil, is cheaply effected at much cost. The keeping of a daily Register is a means, by which the committees can be enabled to obtain, instead of conjectural, returns, for the Annual Abstract, "Register" and the "Annual Abstract" are so far from being a waste, that both should be continued or both abolished. These returns are prepared as statistics for legislative action and for public use. If true, they will evince philosophical principles as a basis of wise measures. But if false, they lead to error, without scientific certainty ; and they annul the chance which chance enjoys of being sometimes right by accident or

we are already aware that the "*Form*" of the Register, of the year 1871, was sent out in single sheets, and for one year its utility might be tested ; and that "in order to establish a permanent Register, all persons were invited to send in suggestions." In the circulars, sent to the school committees, this invitation was repeated. Verbally or in writing, I have received a variety of suggestions, for modifying its form. Some of these suggestions are diametrically opposite to each other, even from towns lying side by side, and whose general characteristics (except in the amount of attention, bestowed upon them) are similar. The number of towns in the country, is large, which, on one side, declare it to be too complicated and, on the other, suggest, as improvements, the addition of a number of new items. I mention these particulars, that you may know, how impossible is a conformity to views



so conflicting. As some teachers and school committees do not seem to be aware of the advantages of keeping so full a Register has been proposed, perhaps it may be expedient to prepare a Form embracing those facts only, of which a record should be kept, in every school ; and then, to leave it to those who more fully appreciate its uses, to keep such a supplementary Register as they may think best.

The report on Schoolhouses, made by me to the Board in March last, detailing, among other things, (see pp. 30, 31,) a plan for a union of school districts and a gradation of schools, in places where the compactness of the population would allow, was followed by the action of the Legislature of April 25th, authorizing a union of school districts for the important purposes specified. A few towns have already acted upon that plan, and the public mind is earnestly called to it by the friends of education in other places. Wherever it can be adopted, it will tend to diminish the evils and to increase the efficiency of our educational system.

But were all the territory of the State judiciously divided into districts ; were there a just gradation in the schools ; were every schoolhouse good ; had every school the best teacher that could be found ; and the guidance and encouragement of the most wise and assiduous school committee ;—still, all these would be only preliminary steps to the numerous and complicated processes of Education. The true medium in the government of schools, between austere demeanor and severity on the one hand, and, on the other, a facile temper, yielding to every pressure and just according to the pressure ;—the great questions of rewards and punishments, whose influence spreads out over such wide tracts of feeling and character in after-life ;—the selection of motives to enkindle the ardor of children in their studies, together with the precedence of these motives in regard to each other, that whether the minds of children should be forever turned outwards to the worldly advantages of wealth, office, rank, display, as incitements to duty ; or inwards, towards the perception of right and wrong in their own hearts, and to the noiseless, boundless rewards, which nature gives for conscientious conduct, in spite of the laws, or power or hate of men ;—the one course, setting the applause of the world before rectitude, the other reversing their position :—and in regard

intellectual in their character ;—such as the success tending to cultivate the mental powers, in the oraral development ;—the question of a more or less from one study to another ;—the degrees in which ction or government of a school should be modified ted to peculiarities of individual character ;—all these, points would remain to be settled before the outlines of any thing worthy to be called a philosophical plan

Surveying the subject, therefore, in the extent and parts, the only practicable and useful course seemed some particular topic, and, as far as possible, to col-e principles, and offer hints for practice. Science must servation ; art out of science.

riest observations made on visiting schools, (and such d were, probably, above the average of schools in the been impressed with the obvious want of intelligence, classes, respecting the subject-matter of the lessons. ceptions, I regret to say, that the eyes, features, and readers have indicated only bodily sensations, not ; while the volume of voice emitted has too closely re-mechanical contrivances for the transmission of fluids, mirable precision, discharge equal quantities, in equal same time, I was sure, that, had the subject-matter ession been understood, it would have opened a foun-rable emotions within, whose streams would have ough every channel of expression. And on examina-en found, that the black and white page of the book boundary of the reader's thoughts, and a barrier to ar-ress, instead of being a vehicle to carry them onward o whatever region the author might have expatiated, ds were directed to the subject-matter of the reading rderly unfolding of its parts, as branches proceeding rnk, I have found them committing mistakes which, e, as facts, were most lamentable, as indications. mode, and the degree of success found to attend it, children the orthography and significance of their o be the most important question which could be put in

regard to their intellectual culture, I determined to make those the main objects of inquiry in my annual visit into the different counties. For distinctness' sake, I proposed, among others, the following questions to the school committees of the several towns in the State.

1st. "*Are scholars in your schools kept in spelling classes from the time of their earliest combination of letters, up to the time of leaving school; or what is the course ordinarily pursued, in regard to teaching orthography, and how long is it continued?*"

2nd. "*Are there defects in teaching scholars to read? This inquiry is not made in regard to the pronunciation of words and modulation of the voice. But do the scholars fail to understand the meaning of the words they read? Do they fail to master the contents of the reading lessons? Is there a presence in the minds of the scholars, when reading, of the ideas and feelings intended to be conveyed, and excited by the author?*"

In answer to another question, not here quoted, relative to the system within which children attend our public schools, I have learnt, from *exclusive* regulations, founded on age, exist in but very few towns, probably in not more than fifteen or twenty,—in the State. And although the great majority of the children in the schools are between the ages of four and sixteen, yet in almost all the towns, they are allowed to attend both earlier and later, and they are found from the youngest and sometimes from two years of age, up to twenty-one years, frequently, and sometimes to twenty-four or twenty-five. I learned also, that, with scarcely a single exception in the whole State, scholars are kept in spelling classes, or they spell daily from their reading lessons, from the time of their earliest combination of letters up to the time of their leaving school; and yet, if testimony derived from a thousand sources, and absolutely uniform, can be relied on, there is a Babel-like diversity in the spelling of our language.

It is impossible to ascertain with any considerable degree of precision the per centage of words in ordinary use, which the children are unable to spell; but it seems to be the general opinion of the most competent observers, that the schools have retrograded with the last generation or half generation, in regard to orthography. It is the condition of the schools better in regard to reading, as will hereafter be shown.



incorrect spelling and unintelligent reading is, by no imputable to teachers. It springs, in part, from the unadapted to the different stages of growth in youthful age. The chief cause consists in a most pernicious error on the part of the teacher in regard to the true objects of reading. Many teachers assured me, that they are perfectly aware, that the chief object of reading is mainly lost ; but that the usages of the school authorities of the district, prohibit them—perhaps under penalty of censure—from adopting a better mode. It is said, that the chief inquiry, made by parents of their children is, “ how many books have you read,” not “ what have you read about ?” The chief object of the last, presupposes some judgment and some ability to follow up with further inquiries ; but any body can put the child to a easy problem which solves the ratio of mental progress by the number of pages mechanically gone over. The child is not looked into, to see what new operations they can perform ; but the inquiry relates only to the amount of labor of the organs of speech ;—as though so many turns of the wheel would yield, perforce, a corresponding amount of knowledge. It is characteristic of the learned professions, that they direct the employer ; and it is earnestly to be hoped, that they will soon deservedly win so much of the confidence of the public that they will no longer feel constrained to practise a method now to be valueless, in order to harmonize with opinion which is to be pernicious.

It is, also, that this mischief may have been aggravated, where there is a gradation of schools, by the conditions in their regulations, for advancing from one school to another. An important fact, I have learned, is, that in places containing more than one hundred thousand inhabitants (one-seventh of the population of the State,) a condition for advancement from one school to another is, either in express words or in implication, that the candidate shall be able to “ read fluently.” Under such a condition a strong desire exist to advance children to a higher grade. There is great danger that the value of *intelligent* reading is sacrificed to the worthlessness of mere “ *fluent*” reading. Where the schools are open to all, an inability to spell

the commonly used words in our language, justly stamps the deficient mind with the stigma of illiteracy. Notwithstanding the intrinsic difficulty of mastering our orthography, there must be some defect in the manner of teaching it ;—otherwise, this daily attention of the children to the subject, from the commencement to the end of their school-going life, would make them adepts in the mystery of spelling, except in cases of mental incapacity. Anomalous, arbitrary, and contradictory, as is the formation of the words of our language from letters, yet it is the blessing of the children, that they know not what they undertake, when they begin the labor.

But, however deeply we may be mortified at the general inability of our youth to spell well, it is the lightest of all regrets, compared with the calamity of their pretending to read, what they fail to understand. Language is not merely a necessary instrument of civilization, past and prospective, but it is an indispensable condition of our existence as rational beings. We are accustomed to speak with admiration of those assemblages of things, we call the necessities, the comforts, and the blessings of life, without thinking that language is a pre-necessity to them all. It requires a union of two things, entirely distinct from themselves, to confer the highest attribute of human greatness ; in the first place, a creative mind, revolving, searching, reforming, and perfecting, within its own silent recesses ; and then such power of expression, the energy and copiousness of language, as can bring into light what has ever was prepared in darkness and can transfer it to the present from the absent, to contemporaries or posterity. Thucydides makes Pericles say, that, “one who forms a judgment upon any point, cannot explain himself clearly to the people, might as well have no thought at all on the subject.” The highest strength of understanding and justness of feeling, without fitting language to make themselves manifest, are but as the miser’s hoard ; without even the reverse of the benefit, we may ultimately expect from the latter. And for all social purposes, thought and expression are dependent, each upon the other. Ideas without words are valueless to the public ; and words without ideas have this mischievous attribute, that they inflict the severe pains and penalties on those who are most innocent of thus abusing them.

This is not a place to speak of the nature and utility of language.



is rigidly necessary to an exposition of the best thing and the true object in using it. Within this limit, observed, that we arrive at knowledge in two ways ; first, observation of phenomena without, and our own contemplation of what passes within us ; and we seek words aptly to describe what has been observed, whether material or mental. In objects and events are known to us, before the names, which describe them ; or, secondly, we see or hear through a knowledge of their diversified applications, acquainted with objects and phenomena, of which we otherwise have remained forever ignorant. In this case, the words are a knowledge of the things they designate. In one case, introduced to words through things ; in the other, to things through words ; but when once both have been strongly associated, the presence of either will suggest its correlative. The fund of knowledge laid open to us by the former mode is in a proportionable and assignable proportion to the immense resources proffered by the latter. Without language, we should know something of the intrusive phenomena, within reach of the senses, but an impenetrable wall of darkness would lie beyond their narrow horizon. Without language, that horizon recedes until the expanse of the visible world, its continents, its air, its oceans, and all that are therein, is before our eye, like an adjacent landscape. Without language, we have no memory dates the beginning of time, and the record of our history. Our ordinary existence contains all that we can know of universal truth. But with language, antiquity re-lives ; we are spectators of the world's creation ; we are present with our first progenitors ; we see the glory of a new life beamed from their inanimate forms. A long train of historic events passes in review before us ; we see the multiplication and expansion of our race, from individuality to nations, from patriarchs to dynasties ; we see their temporal and moral transformations ; the billowy rise and fall of empires, the subsidence of races, whose power and numbers covered the earth ; the emergence of feeble and despised tribes into extended dominion ; we see the dealings of God with men ; we see the dealings of men with each other ;—all, in fine, which has been suggested by our kindred nature, in arms, arts, science, phi-

losophy, judicature, government ; and we see them, not by their own light only, but by the clearer light reflected upon them from subsequent times. What contrast could be more striking, than that between an unlettered savage and a philosopher,—the one imprisoned, the other privileged,—in the halls of the same library ;—the one compelled by fear to gaze upon the pages of a book, the other impatient for the pleasure of doing it ! As the former works his reluctant eye downwards over successive lines, he sees nothing but ink and paper. Beyond, it is vacancy. But to the eye of the philosopher, the sombre pages are magically illuminated. By their light he sees other lands and times. All that filled his senses before he opened the revealing page is only an atom of the world, in which he now expatiates. He is made free of the universe. A sentiment uttered thousands of years ago, if touched by the spirit of humanity, falls freshly upon his responsive bosom. The fathers of the world come out of the past and stand around him and hold converse with him, as it were, face to face. Old eloquence and poetry are again heard and sung. Sages imbue him with their wisdom ; martyrs inspire him by their example ; and the authors of discoveries, each one of whom won immortality by the boon he conferred upon his race, become his teachers. Truths, which it took ages to perfect and establish ; sciences elaborated by the world's intellect, are passed over to him, finished and whole. This presents but the faintest contrast, between the savage and the philosopher, looking at the same books, and, to a superficial observer, occupied alike.

To prepare children for resembling the philosopher, rather than the savage, it is well to begin early, but it is far more important to begin right ; and the school is the place for children to form an invincible habit of never using the organs of speech, by themselves, and as an apparatus, detached from, and independent of, the mind. The school is the place to form a habit of observing distinctions between words and phrases, and of adjusting the language used to various extents of meaning. It is the place, where they are to commence the great art of adapting words to ideas and feelings, just as we apply a measuring instrument to objects to be measured. Then, in after life, they will never venture upon the use of words which they do not understand ; and they will be enabled to use

live with their thoughts and feelings,—language which  
so much of any subject as they wish to exhibit, as  
if they could have walked round it and set up land-

enough devoted to exercises on language in our  
enabled every one of that numerous class of citi-  
tainments and good sense entitle them to be elected to  
es or to some station in the government, to prepare  
ents, to draft petitions, reports and so forth, upon all  
ects, not professional or technical. Yet how many  
ent judgment find themselves unable to express their  
ly and forcibly, in speech or writing, because they  
en accustomed to apply language to mental operations.  
onversant with the profession of the law, knows, that  
rable portion of those litigated cases, which burden  
broil neighborhoods, arises from some misapprehen-  
eaning of the language, used by the parties, in oral or  
acts. The time, spent by the scholars in reading, from  
ght or ten to sixteen years, is amply sufficient to enrich  
with a great amount of various and useful knowledge,  
aching one hour upon other accustomed studies.

another fact, most pertinent to this part of the subject.  
own that science itself, among scientific men, can never  
eyond a scientific language in which to record its laws  
. An unscientific language, like the Chinese, will keep  
cientific forever. So the knowledge of a people on any  
ot far exceed the compass of the language, which they  
end. If what are called the exact sciences do not de-  
exactness of the language they use, all exactness in oth-  
es. Nor is it a fact of less importance, that language  
e mind that uses it. It is like the garments, in which  
clothe themselves, which shape the very limbs, that

Men are generally very willing to modify or change  
and views, while they exist in thought merely, but  
nally expressed, the language chosen often becomes  
e opinion. The opinion fills the mould but cannot  
sume a new form. Thus errors of thought and of  
n impotence of language.



The English language has been estimated to contain seventy-eighty thousand words in reputable use. A knowledge of so many of these words as are in common use, with a power of summoning them, like trained bands, to come at the bidding of thought, arises from the smallest beginnings. The distance is so immense, between the first, rude articulation of an infant, and the splendid and law-giving utterance of an eloquent man, that we could hardly believe, before-hand, that the two extremes had reference to the same individual. To gain time, by shortening the distance between these extremes, by removing obstacles and thus accelerating progress from the former to the latter, is one of the most appropriate labors of education. The hints which follow are offered with diffidence ;—in the hope, however, that they may prove useful themselves, or be suggestive to other minds of that which is better.

The process of learning to spell our language is so imperceptibly lost in that of learning to read it, that the two can best be considered together.

One preliminary truth is to be kept steadily in view in all the processes of teaching, and in the preparation of all its instruments ; that, though much may be done by others to aid, yet the effective learning must be performed by the learner himself. Knowledge cannot be poured into a child's mind, like fluid from one vessel into another. The pupil may do something by intuition, but generally there must be a conscious effort on his part. He is not a passive recipient, but an active, voluntary agent. He must do more than admit or welcome ; he must reach out, and grasp, and bring home. It is the duty of the teacher to bring knowledge within arm's length of the learner, and he must break down its masses into portions so minute, that they can be taken up and appropriated, one by one ; but the final appropriating act must be the learner's. Knowledge is not annexed to the mind like a foreign substance, but the mind assimilates it by its vital powers. It is far less true, that each one must earn his bread by the sweat of his own brow, than it is that each one must earn his own knowledge by the labor of his own brain ; for, strictly speaking, nature recognises no title to it by inheritance, gift or teaching. Development of mind is by growth and organization, not by external accretion. Hence all effective teaching must have reference

able, consummating act and effort of the learner. It undoubtedly be modified by external impressions, the mind is sometimes spoken of as passive, recipi- and the objects around us have a fitness and adapta- mental activity ; but the acquisition of positive knowl- ted by a process of involuntary absorption. Such a to the philosophy by which, a few years ago, a gram- is published and pretty extensively sold in some of se peculiar virtue it was, that, if hung up somewhere whole family would shortly become good grammari- ously imbibing, as it were, certain grammatical efflu- nction should become broader and broader, between education which deals with mind as living spirit, and is with it as a lifeless substance. Every scholar, in a ink with his own mind, as every singer, in a choir, must own voice.

arning, all wills and desires, all costs, labors, efforts, of endant, at last, upon the will of the learner, the first existence in his mind of a desire to learn. Children, months in learning the alphabet, will, on the play- ngle half day or moonlight evening, learn the intricacies port,—where to stand, when to run, what to say, how what are the laws and the ethics of the game ;—the g more intellectual effort than would suffice to learn half ets. So of the recitation of verses, mingled with ac- uvenile games, played in the chimney corner. And that for the one, there is desire ; while against the repugnance. The teacher, in one case, is rolling a in the other, down ; for gravitation is not more to the eavy body, than desire is to the efficiency of the intel- desire to learn exists within the child, some foreign stantly be supplied to keep him agoing ; but from the desire is excited, he is self-motive, and goes alone.

best way of inspiring a young child with a desire of d is, to read to him, with proper intervals, some inter- rfectly intelligible, yet as full of suggestion as of com- or the pleasure of discovering is always greater than

that of perceiving. Care should be taken, however, to leave before the ardor of curiosity cools. He should go away longing, loathing. After the appetite has become keen,—and nature supplies the zest,—the child can be made to understand how he can procure this enjoyment for himself. The motive of affection also may properly be appealed to, that is, a request to learn in order to please teacher ; but this should never be pressed so far as to jeopard its existence, for it is a feeling more precious than all knowledge. The process of learning words and letters is toilsome, and progress will be slow, unless a motive is inspired before instruction is attempted, and if three months are allowed to teach a child his letters, there is a greater probability, that the work will be done at the end of the time, even though ten weeks of it should be spent in gaining his voluntary co-operation, during the residue of the time. A desire of learning is better than all external opportunities, because it will find or make opportunities, and then improve them.

Such are the difficulties in acquiring the orthography of our language, that it is said we have but two or three classes of uniformly correct spellers. Almost all, except publishers or printers and proof-readers, are more or less deficient in this acquisition. While in some other languages, as the Italian, French and German, assigned to individual letters a power, which is scarcely varied whenever they occur ; the power given to the letters, in the English alphabet, bears little resemblance to their power, when combined in words. In this vast number of words, there is a uniformity of pronunciation with a diversity in spelling, or a diversity in pronunciation with similar spelling. The same letter has many different sounds, while different letters have the same sound, so that the learner, after learning the sound of a letter in one place, has no assurance of being right in giving it the same sound in another. The letters seem to change work with each other. Added to this, many words have silent letters, and in words of otherwise of a formation exactly similar, some have silent letters and others none. Were it not for our familiarity with it, no fact would be more striking, than that which always presents itself to the eye upon opening an English dictionary ; viz. the double column of words for the same language,—one for a guide in spelling, the other in pronunciation. But it is no part of this report to analyse our language.



its unscientific structure and anomalous composition very much too late or too early to reform its arbitrariness. To adapt the pronunciation to the orthography is like a new spoken language ;—to adapt its orthography to the pronunciation would be to make a new written one.

When the time to learn exists, the first practical question respects the order in which letters and words are to be taught ; i. e. whether letters separately, as in the alphabet, shall be taught before words, or whether other monosyllabic and familiar words shall be taught first.

In those who have learnt, and have since taught, in the common method, and have never heard of any other, this suggestion may be a surprise. The mode of teaching words first, however, is not a new theory ; nor is it new. It has now been practised for many years in the primary schools of the city of Boston, — in which more than five thousand children, — and it is found to succeed better than the old mode. In other places in this country, and in Europe, where education is successfully conducted, the mode of teaching words first, and letters subsequently, is now becoming general. Having no personal experience, I shall venture no opinion on this point ; but will only submit a few remarks for the consideration of those, who wish, before countenancing the plan, to consider the reasons on which it is founded.

From the first year of a child's life, he perceives, thinks, and feels, and has a store of ideas, without any reference to words. After this, the wonderful faculty of language begins to develop itself. Children then utter words, — the names of the objects around them, — as whole sounds, and without any connection with the letters of which those words are composed. In the word "apple," for instance, young children think of the object, and not of the Roman letters, which spell it, or of the chemical ingredients, — the oxygen, hydrogen, — which compose it. Hence, presenting them with words, is giving them what they never saw, heard, or thought of. It is as new as algebra, and to the eye, not very unlike the printed names of known things are the signs of sounds which children have been accustomed to hear, and their organs are excited to utter, and which may excite agreeable feelings and ideas by reminding them of the objects named. When put

to learning the letters of the alphabet first, the child has no acquaintance with them, either by the eye, the ear, the tongue, or the mind; but if put to learning familiar words first, he already knows them by the ear, the tongue, and the mind, while his eye only is unacquainted with them. He is thus introduced to a stranger, through the medium of old acquaintances. It can hardly be doubted, therefore, that a child would learn to name any twenty-six familiar words, not sooner than the twenty-six unknown, unheard and unthought of letters of the alphabet.

For another reason, the rapidity of acquisition will be greater if words are taught before letters. To learn the words signifying objects, qualities, actions, with which the child is familiar, turns his attention to those objects, if present, or revives the idea of them if absent, and thus they may be made the source of great interest and pleasure. We all know, that the ease with which any thing is learned and the length of time it is remembered, are in the direct ratio of the vividness of the pleasurable emotions, which enliven the acquisition.

But there is another consideration far more forcible than the preceding. The general practice is founded upon the notion that the learning of letters facilitates the correct combination of them into words. Hence children are drilled on the alphabet, until they pronounce the name of each letter at sight. And yet, when we combine letters into words, we forthwith discard the sounds, which were longed to them as letters. The child is taught to sound the letters until he becomes so familiar with it, that the sound is uttered as soon as the character is seen. But the first time, this letter is sounded even in the most familiar words,—as in *father, papa, mama, apple, peach, walnut, hat, cap, bat, rat, slap, pan, &c. &c.*—it no longer has the sound he was before taught to give it, but one entirely different. And so of the other vowels. In words, they all seem in a new querade. Where is the alphabetic sound of *o* in the words, *wood, dove, plough, enough, other*, and in innumerable others. Any person may verify this by taking any succession of words, at random in any English book. The consequence is, that whenever the child meets his old friends in new company, like rogues, they have changed their names. Thus the knowledge of the sounds of le-



becomes an obstacle, to the right pronunciation of a more perfect the knowledge, the greater the obstacle of the child, for having thoroughly mastered his we his knowledge of them cut up in detail, by a regular adictions, just as fast as he brings it forward. How distance, is the sound of the word *is*, from the two alphai and *s*;—of the word *we*, from the two sounds, *w* and ord, *two*, from the three sounds, *t*, *w*, and *o*. We teach d to sound the letters, *e*, *y*, *ε*, singly, until he utters and then, with a grave face, we ask him what *e*, *y*, *ε*, he does not give the long sound of *i*, he is lucky, if rebuke or a frown. Nothing can more clearly prove confidence and trustfulness of a child's nature, than his charging us, under such circumstances, with imposition

fact, however, which may, perhaps, in part, cancel  
s, here pointed out. The alphabet must be learned,  
because there are various occasions, besides those of  
dictionaries or cyclopædias, where the regular sequence of  
it be known; and possibly it may be thought, that it will  
to learn the letters, after learning the words, as before.  
which deprives this consideration of some part at least  
s, that it always greatly facilitates an acquisition of the  
ts, or persons, to have been conversant with their  
appearances beforehand. The learning of words is an  
an acquaintance with the letters, composing them.

the inconsistency of teaching children the names of letters to be untaught as soon as they are combined into words. Persons instruct them in the vocal elements of the alphabet, that is, to utter, for each letter, that part of the sound of the word, which belongs to the letters, respectively,—for example, breathing for the letter *h*, instead of the sound of the letter. This practice is very limited.

p in the acquisition of our language is the spelling of  
arbitrary and capricious formation of words from  
ubtably, one great cause, that with all our attention to  
have so few good spellers.

One fact has been often remarked, that if children do not learn to spell pretty correctly, before the age of ten or twelve years, they rarely become good spellers afterwards. This fact supplies us with a useful hint, in regard to making other studies give place, a little to this, before the favorable season is passed. Another consideration, derived from the order in which the intellectual powers are developed, strongly corroborates the same position. Language is an early developed intellectual power ;—reason is one of the last. The spelling of a tongue, so anomalous as ours, depends upon verbal memory. It is not a subject to be reasoned about. When more one relies upon his reason to determine the true spelling of English words, the oftener he will mistake. The discovery and correct application of principles and analogies would generally ensure correctness. I presume it has happened to many persons, in writing, that if they could write one of the less common words without thinking how it should be spelt, they would write it correctly ; but if, by any chance, the inquiry how it should be spelt, arose in their minds, they would immediately be involved in doubts, where no reasoning could solve, and be obliged to turn to a dictionary. These facts indicate also, that spelling should be pursued at an early age, when more is learned by perception and imitation, than by reflection.

But one thing should be insisted upon, *from* the beginning, especially *at* the beginning. No word should be taught, whose meaning is not understood. The teacher should not count words, faster than ideas. The foundation of the habit should be laid, in the reading of the very first lesson, of regarding words as the names of things ; as belonging to something else, and as not existing by themselves. They should be looked at, as a medium, and not as an end. It is as senseless for a child to stop at the sign of a printed word, in reading, as it would be to stop at the sound of a spoken word, in conversation. What child would not repeat the intercourse of a person, who spoke to him only words, of which he knew nothing ? No personal charms would be long sufficient to compensate for speaking to a child, in an unknown tongue. It is not possible then, that an active-minded child should not disdain dreary pages of a book, which awaken no thought or emotion within him ;—which are neither beauty to the eye, nor music to the

understanding ? As reading is usually taught, the child comes into communication with his lesson, by any one means. When a child looks into a mirror, or at a picture, the perspective is strikingly marked, he will reach behind the mirror, or behind the picture, in hope of finding objects in the place where they appear to be. He cares not for the mirror, nor for the canvass ;—his mind is with the objects and not to his senses. In reading, the page should be only a mirror or picture, through which objects are beheld. Thus the child finds far more delight in looking at the former, than at the latter. The words can present more circumstances of variety, of amplitude, than any reflecting surface or dead picture. The child revolts at the tyranny of being obliged to pore, day after day, in the outer darkness of a Chinese manuscript ? But when letters are not understood, the more regular formation of the Chinese characters gives them a decided advantage over our own alphabet. To a child two glasses, precisely similar in every respect, one shall be opaque, the other a magnifier. Through the magnifier every thing can be seen, and it therefore degenerates into a mirror. The latter seems to create a thousand new and brilliant images, and hence the child is enamored of its quality. There is precisely the same difference in the presentation of words. Yet we punish the child because they do not master words, without any regard to the manner of instruction.

How is this plan to be executed ? In this way. During the first years of a child's life, before the faculty of speech is developed, the child has never uttered a word,—he has obtained a considerable amount of knowledge, respecting objects, qualities and motions. During the first two and before it is usual to teach letters, he is employed in every waking hour, both in learning the words, expressing his own phenomena and also in acquiring a knowledge of new objects ; so that before the age of four or even three years, the child's inventory of elementary knowledge swells to thousands. These are not merely playthings, but catalogues of furniture, minerals, insects, animals, vehicles, objects in natural scenery, of time, and so forth, with various motions and appearances pertaining to them all. Numbers, sounds, events, feel-



ings, also come into the list. This is a stock not readily exhausted. By first teaching the names or phrases expressive of these, the instance is always present to his mind, and the words are mere words or incidents ; and a habit is formed of always keeping the mind after-life, intent upon things and their relations,—a habit of inestimable value and the only foundation of intellectual greatness.

I am not unaware of what is said by Locke, Burke and others of our using words and phrases, without at all summoning into the mind, the particular ideas, signified. This is undoubtedly true in some extent, but it belongs to a later period in life. It is only after having used words, times almost innumerable, with an accompanying conception of the things signified, that we, at last, transfer the words, a general conception of what originally belonged to the ideas. If comparisons may be allowed to illustrate a point somewhat obscure, the words have been so long used as a vehicle of the thoughts that, at last, when we see the vehicle, we presume the content. Or, as in the case of those persons, who are accustomed to measure large masses of specie, over and over again, in branded boxes or belled bags ; having opened them many times and found them to contain the quantity stamped, they afterwards count by the mark. It is with words in relation to ideas. But, if the ideas have never been compared with the words ; that is, if the specie has never been counted and compared with the stamp, then, the latter has no significance. Hence the comparisons are the very first steps in the operation, and it is only by virtue of having made them, that we can afterwards venture to facilitate the operation, by relying upon the ideas. And an early habit of associating every word with an idea, is considered so much the more necessary, because words are only arbitrary and artificial signs of thoughts and feelings. Were they natural then the whole stress of observation and experience through life would serve to connect and bind together, more and more closely, the words and the things signified. There would be a perpetual and strong tendency to coalescence between them. But as the relation is wholly conventional, if the habit is not formed of uniting the words to the sense, an opposite habit of separating them is necessarily established. For an obvious reason, therefore, a correct habit is more easily formed at the commencement than ever afterwards.

process observed, it would reduce almost to nothing men amongst us ; one of whom are greatly impaired, because, though they think much, they can never be absolutely noxious, because, though speaking much, they do not think. The latter class, indeed, seem to be retreating at the period of their life, when they thought without speaking, without thinking, during the residue.

It is said, however, that a child should not be put to read, until he cannot understand, it is to be taken with that reasonable limitation which springs from the nature of the case, and which every sound mind will supply. There are certain words in every language whose comprehension all finite intellect must fall almost short of. Such are the words immensity, infinity, absolute, and so forth. These are used, as mathematicians use algebra, to express unknown quantities. There are other words whose meaning, no man has any thing more than a proximate notion of. But a child of three years may perfectly understand what is meant, if he reads the word *newspaper*, and he may have notions respecting it, such as *title, outside, inside, colour, top, bottom, size, length, breadth &c.*—and these give him a palpable idea of a newspaper,—without knowing, that it is printed, and that, for its production, there may have been resort to all the human faculties, working on the three kingdoms, mineral, vegetable and animal. So a child may have a notion of the meaning of such words, as *home, parent, duty, conscience*, without penetrating one line's length into the considerable depth of meaning. What is insisted upon is, that a child should have a clear conception of what is meant, that such a conception should be correct, as far as it goes, and that it should be as his ability will allow.

A child should be skilfully taught, with only a due alternation between mental exercise, and with an inspection of as many of the beauties of nature and art, as common opportunity would allow, it that he might acquire a knowledge of the spelling and of the meanings of substantially all the unscientific and untechnical words of ordinary use, before passing the age, when orthography becomes more difficult of attainment. If, however, owing to

early neglect in education, or to mental inefficiency, the most favorable season for learning to spell is passing away, and it is deemed advisable to hasten this acquisition at the expense of other studies, (and any one so prefers,) even of the meaning of words ; then it is believed that the words may be so classified in the spelling-book, as greatly to facilitate the labor. For this purpose, let words be arranged together whose difficult syllables agree in formation ; as, for instance, *syllable*, *sycophant*, *syllan*, *symbol*, *synagogue*, *syntax*, in which *y* has the sound of *i*, short ; or in words, where *ch* has the sound of *k*, as in *mnemonic*, *chronological*, *bacchanalian* ; or in words, where *qu* has the sound of *k*, as in *mosque*, *opaque*, *liquor* ; or where *ei* has the sound of *a*, as in *eight*, *weight*, *inveigh*, &c. This list might be almost indefinitely extended ; the above are given as specimens merely. A great advantage of this system is, that when the true formation of the difficult syllable is known for one word, it is known for the whole table, and frequent repetitions of the table will fix the order of the letters in the memory, which by the law of association, will afterwards involuntarily recur, like products in the multiplication table, or successive notes in a well-learned piece of music. Habit, founded on this association, will command the successive letters in writing, as unconsciously, as it does successive steps in walking. An excellent spelling-book has lately been published in this city, in which words are arranged with reference to their intelligibility to children, and Webster and Fowle have made close approximation, certain arrangements of words, in conformity with the law of mental association above referred to. It is believed that a spelling-book may be prepared which shall combine the first, greatest, and most indispensable requisites, that of addressing the innate and universal love of learning new things,—with such a philosophical adaptation to the successive periods of mental development, as shall, as a general rule, present what is to be learned, during the epoch, in which it can be most easily, and pleasurably acquired.

Would my limits permit, I should be glad to enter into some detail with regard to the modes, now practised in our schools, of teaching orthography. I will, however, only observe, that spelling by writing, (when the pupil can write,) appears to have great advantages over spelling orally. In the business of life, we have no c



y, and thousands of cases have made it certain, that may be a good speller with the lips, who is an in- the pen. Nor is this any more strange, than that t be able to do dexterously with his left hand, what een accustomed to do with his right.

that even in regard to orthography, the book-maker liary of the teacher. It is not less emphatically true the book-maker and the teacher are performing dif- one work. In this division of labor, the book-maker's e performed, and it is impossible for the best teacher e amends for what is untoward or preposterous on the e because clumsy and defective implements will baffle f the most perfect workman. While measures are in efore, to increase the competency of teachers, through Normal Schools ; the principles on which school books eared, should receive careful attention, that good agents instruments. I avail myself of this occasion to make a s upon the subject of reading books.

divisible into two parts. It consists of the *mechanical*,

The mechanical part is the utterance of the articu- a language, on inspecting its written or printed signs. echanical, because the operation closely resembles that hich may receive the best of materials and run through els of them every year ;—the machine itself remain- and naked at the end of the year, as it was at the be- e other hand, one portion of the mental part of read- a reproduction in the mind of the reader of whatever d of the author ; so that whether the author describes s, narrates the history of individuals or nations, kindles or melts in pathos,—whatever was in the author's sudden existence in the reader's mind, as nearly as mental constitutions will allow. An example of the eal part is exhibited in reading a foreign language, no s understood ; as in the case of Milton's daughters, who nguages to their blind father ;—they, with eyes, see- black marks upon white paper,—he, without eyes, ial and spiritual worlds,—at once charmed by their ructured by their wisdom.

With the mental part, then, reading becomes the noblest instrument of wisdom ; without it, it is the most despicable part of and worthlessness. Beforehand, it would seem quite as incredible that any person should compel children to go through with the barren forms of reading, without ideas ; as to make them perform the motions of eating, without food. The body would not dwindle under the latter, more certainly, than the mind, under the former. The inevitable consequences are, that all the delight of acquisition is gone ; the reward which nature bestows upon the activity of the faculties is forfeited,—a reward which is richer than all prizes and more efficient than all chastisement ;—and an inveterate habit is formed of dissociating thought and language. “ Understandest thou what thou readest,” therefore, is a question quite as apposite when put to a teacher to a child in his horn book, as when asked by an Ambassador to the ambassador of a Queen.

Entertaining views of the importance of this subject, of which the above is only the feeblest expression, I have devoted especially to learn, with some degree of numerical accuracy, how far the reading, in our schools, is an exercise of the mind in thinking and feeling, and how far it is a barren action of the organs of speech upon the atmosphere. My information is derived, principally, from the written statements of the school committees of the respective towns,—the gentlemen, who are certainly exempt from all temptation to disparage the schools, they superintend. The result is, that more than eleven-twelfths of all the children in the reading classes, in our schools, do not understand the meaning of the words they read ; that they do not master the sense of the reading lessons, and that the ideas and feelings intended by the author to be conveyed to, and excited in, the reader's mind, still rest in the author's intention, never having yet reached the place of their destination. And by this, it is not meant, that the scholars do not obtain such a full comprehension of the subject of the reading lessons, in its various relations and bearings, as a scientific and erudite reader would do, but that they do not acquire a reasonable and practicable understanding of them. It would hardly seem that the combined efforts of all persons, engaged, could have accomplished more, in defeating the true objects of reading.

How the cause of this deficiency is to be apportioned among



sors of the schools, parents, teachers or authors of it is impossible to say ; but surely it is an evil, gratuitous, prevalent and threatening the most alarming consequence, that it is not a remediless one. There is intelligence in our community, to search out the cause, and wisdom enough to apply a remedy.

I have already stated, that we may acquire a knowledge of a great number of things,—such as are placed within the range of our senses,—by the use of language ; but that language is the only medium, by which any thing, prior to our own memory and experience, or beyond our own vision, can be made known to us. Although, therefore, the words which our language is said to contain, seem to be few, when we think of all the relations of human life,—domestic, political, business, and social ;—of the countless objects in the different departments of nature, with their connexions and dependencies ;—of the sciences, which have been founded upon them, and of the arts, which have been made subservient ;—of all, in fine, external and internal objects, within the circle of time and beneath the arch of heaven ;—of our own conscious hopes, fears, desires, to which that arch is extended ;—we shall see, at once, that the words of our language, as they are, are only as one to infinity, compared with the objects to which they are daily applied. And yet these words are sufficient not only to present us with an image and a representation of past and present existences, but they are capable of outrunning the course of time, and describing the possibilities of the future, transcending the limits of reality and portraying the fanciful worlds, created by the imagination. And, what is still more important, that with the aid of these comparatively few words, we can reach and touch, as it were with the finger, any one fact or circumstance in the universe of facts and events, or parcel out any groups of facts into tens to tens of myriads ; or we can note any period on the scale of by-gone centuries, just as easily as we refer to the passing day. Now to accomplish this, it is obvious, that language must be susceptible of combinations indefinitely numerous ; that its single words must assume different meanings, in different contexts, and that phrases, capable of expressing any one, or more of these facts, vicissitudes, relations, must be absolutely

inexhaustible. Then, again, language has various, strongly marked forms, as colloquial, philosophical, poetical, devotional ; and in each of these divisions, whatever subject we wish to separate from the rest, language can carve it out and display it distinctly and by itself for our examination. It handles the most abstruse relations and analogies, and traces the most subtle analogies to their vanishing point. With equal ease, it condenses the most universal principles into simple sentences, or, if we please, into single words. Hence, in using language to express any greater or smaller part of what is perceived by the senses, by intellect, or by genius, the two conditions are, that we must discern, mentally, what individual object or quality, or combination of objects and qualities, we wish to specify ; and that we must select the words and form the phrases,—or volumes, if we please,—which will depict or designate by name, the individual object we mean, or will draw a line round the combination of objects we wish to exhibit and describe. All true use of language, therefore, necessarily involves a mental act of adjustment, measure, precision, pertinence ; otherwise it cannot fix the extent or gauge the depth of any subject. Language is to be selected and applied to the subject-matter, whatever that subject-matter be business, history, art or consciousness, just as a surveyor applies his chain to the measurement of areas, or as an artist selects his colors to portray the original. But what must be the result, if the surveyor knows nothing of the length of the chain he uses, and if the artist selects his colors by chance, and knows nothing to what parts he applies them ?

Hence, the acquisition of language consists far less in mastering words as individuals, than it does in adjusting their applications to things and sentences and phrases. And one great object—there are others less important—of teaching the children in our schools to read, is that they may there commence this habit of adjustment, of specifying and delineating with precision, whatever is within the range of their knowledge and experience. All attempts, therefore, to teach language to children, are vain, which have not this constant reference to the subject-matter, intended to be specified and described. If the thing signified is not present to the mind, it is impossible, that language should be a measure, for, by the supposition, there is nothing to be measured. It becomes a mere hollow sound ; and



ge, that, from the parade, which is made in administering, the child is led to believe he has received some uselessness of such a process would seem to be enough, falsity. The fact, that many children may not be able progress in this adjustment of words to things, so far as reply to this view of the subject, only renders it so important, that what is done should be done rightly. Understanding the immense treasures of knowledge, accumulated, six thousand years, and the immense difference between men of our own, and of ancient times; yet no one children are now brought into the world in the same state of as they were before the flood. When born, only a single developed,—that of appetite for food. Weeks pass, best of all the senses—the sight—takes note of any about the age of a year, the faculty of language dimly appears after another, other powers bud forth; but it seems to men of the best metaphysicians, that the highest faculties select—those which, in their full development and energy, are the givers of the race, and the founders of moral dynasties—before the age of twelve or fourteen years. And yet, the reading books, now in use, in the schools, the most of learned men; the aphorisms in which moralists have a life of observation and experience; the maxims of philosophy embodying the highest forms of intellectual truth, are set out as Lessons for children;—as though, because a child was named after Bacon and Franklin, he could understand them of course. A child is still engrossed with visible and palpable objects, and even the most trifling playthings are yet a mystery to him, he is prone to some abstraction or generalization, just discovered, after the most study of men and things, by some master intellect. It is not to children, how much knowledge or wisdom there is in the world, on subjects foreign to themselves, until they have the strength of mind sufficient to receive and appropriate it. The only interest which a child has, in the attainments of the world, he is born, is, that they may be kept from him, until he is prepared to receive them. Erudite and scientific men, for the convenience, have formed summaries, digests, abstracts, of

their knowledge, each sentence of which contains a thousandments of truth, that had been mastered in detail ; and, on inspection of these abbreviated forms, they are reminded of, *not taught*, the individual truths they contain. Yet these are given to children though they would call up in their minds the same ideas, which suggest to their authors. But while children are subjected to the law of their Creator, that of being born in ignorance, their growth is the desideratum, which Education should supply, and their intellect cannot thrive upon what it does not understand ;—nay, more, the intellect carries as a burden whatever it does not assimilate as nutriment. An indispensable quality of a school book, then, is its adaptability to the power of the learner. No matter how far, or how advanced, from the starting-point of ignorance, a child may be, the teacher and the book must go to him. And this is only saying that he cannot proceed upon his journey from a point not yet reached, but must first go through the intermediate stages. A child must know individual objects of a species, before he can understand a general descriptive of the species itself. He must know particulars, before he can understand the relations of analogy or contrast between them. He must be accustomed to ideas of visible and tangible extent, before it is of any use to tell him of the height of the Alps or the length of the Amazon ; he must have definite notions of weight, before he can understand the force of gravitating planets ; he must be acquainted with phenomena, before he can be instructed in the principles which harmonize their conflicting appearances ; and he must know something of the relations of men, before he is qualified to perform the duties that spring from them.

Nor should the first lessons be simple and elementary, in respect to the subject only ; but the language of the earliest ones should be literal. All figurative or metaphorical expression is based upon the literal, and can have no intelligible existence without it. After the apprehension of the literal meaning of words, there is a charm in their figurative applications ; because a comparison is silently made between the figurative and the literal meanings, and the resemblance perceived awakens a delightful emotion. And this pleasure is proportioned to the distinctness of the related ideas. But how can a child understand those figures of speech, where a part is put for the whole,

rt, when he knows nothing either of whole or part ;—  
 e objects are put for intelligible, or animate things for  
 en he is wholly ignorant of the subjects, likened or con-  
 w can there be any such thing as tautology to a child,  
 uainted with what went before ; or how can he perceive  
 both extremes are invisible ? In writings, beautiful from  
 of their suggestion, the tacit reference to collateral ideas  
 t ; and yet it is the highest proof of a master, to in-  
 eas with which pleasurable emotions have become asso-  
 ence, a child, put into reading lessons which are beyond  
 not only reads with a dormant understanding, but all the  
 roductive of taste, refinement, elegance, beauty, are  
 The faculties being unemployed, the reading, which  
 ould have been a pleasure, becomes irksome and repul-  
 re is another pernicious consequence, inseparable from  
 of depositing, in the memory of children, those general  
 cal views, which they do not understand. It leads to an  
 extreme in instruction ; for when children, whose memory  
 en cultivated, are really to be taught any subject with  
 s, and for practical application ; it then becomes neces-  
 lify and degrade it to the level of their feeble apprehen-  
 why cannot the faculties be strengthened by exercise, so  
 ess of time, they can master more difficult subjects, as  
 grade subjects to the level of weak faculties ?  
 nicating the elements of knowledge to children, there is,  
 ttle danger of being too minute and particular.~ Expan-  
 ation, illustration, circumlocution,—all are necessary.  
 hild advances, less diffuseness is requisite. The prolix  
 ncise. Different and more comprehensive words are  
 same, in an enlarged signification. What was pulver-  
 mined in atoms, is now collected and handled in masses.  
 er, is to be taken at every step, in the first place, that  
 nted to the learner should demand a conscious effort on  
 without such an effort, there will be no increase of strength ;  
 ext place, that what is presented should be attainable by  
 r without success, discouragement and despair will en-  
 l books, however, are made for classes and not for indi-



vidual minds, and hence the best books will be more precisely adapted to some minds than to others. This difference, it is the duty of the teacher to equalize, by giving more copious explanations to the dull and unintelligent, and by tasking the strong and apprehensive with more difficult questions, connected with the text. Every sentence will have related ideas of cause and effect, of what is antecedent, consequent or collateral, which may be explored to the proper extent, indicated by different abilities. The old Balearic islanders of the Mediterranean, famed among the ancients for being the best marksmen and slingsmen, in the then known world, had in this respect the true idea of Education. They placed the food of their children on the branches of the trees, at different heights from the ground according to age and proficiency, and when the children had dislodged it, by bow or sling, they had their meals, but not before.

Tested by this criterion, are not many of the reading books in our schools, too elevated for the scholars? It seems generally to have been the object of the compilers of these books, to select the most profound and brilliant passages, contained in a language which the highest efforts of learning, talent and genius have embalmed. Had there been a rivalry, like that at the ancient Olympic games, where emulous nations, instead of individuals, had entered the classic lists, as competitors for renown, and our fame as a people had been staked upon our eloquent, school book miscellanies, should have questioned the integrity of the umpire, had we not won the prize. Certainly from no ancient, probably from no other modern language, could such a selection of literary excellencies be made as some of them exhibit ;—demonstrative arguments on the most obscure and recondite subjects, tasking the acuteness of practised logicians, and appreciable only by them ;—brilliant passages of polemical debates, whose force would be irresistible, provided only one were familiar with all contemporary institutions and events ;—scenes from dramas, beautiful if understood, but unintelligible without an acquaintance with heathen mythology ;—wit, poetry, eloquence whose shafts, to the vision of educated minds, are quick and refulgent as lightning, but giving out to the ignorant, only an empty rumbling of words ;—every thing, in fine, may be found in their pages, which would make them, at once, worthy the highest admiration of the learner.

intelligible to children. If I may recur to the illustra-  
 earic islanders, given above ; the prize of the young  
 archers is invaluable, if it can be obtained, but it is  
 as to be wholly invisible. Children can advance from  
 on, that one and one make two, up to the measurement  
 distances, but an immense number of steps must be taken  
 the intermediate spaces. And it is only by a similar  
 progressiveness, that a child can advance from under-  
 nursery talk, as " the ball rolls," " the dog barks," " the  
 until his mind acquires such compass and velocity of  
 that when he reads the brief declaration of the Psalmist,  
 , how manifold are thy works ; in wisdom hast thou  
 all !" his swift conception will sweep over all known parts  
 rse in an instant, and return glowing with adoration of  
 r.

comprehensible reading books draws after it the inevita-  
 ence of bad reading. Except the mental part is well  
 impossible to read with any rhetorical grace or propriety.  
 one, ignorant of the Latin and French languages, expect to  
 a or French author with just modulations and expressive-  
 e, at the first or at the ten thousandth trial ? And it mat-  
 at language we read, provided the mechanical process is  
 no vitality of thought. Something, doubtless, depends  
 ility and pliancy of physical organs ; but should they be  
 fect, a fitting style of delivery is born of intelligence and  
 , and can have no other parentage. Without these, there  
 erception of impropriety, though epitaphs and epigrams  
 he same manner. If the pieces of which the reading  
 st, are among the most difficult in the English language,  
 rd to expect, that the least instructed portion of the peo-  
 g English—the very children—should be able to display  
 g with grace and fulness ? To encourage children to  
 supposed natural way of expressing emotions and senti-  
 do not feel, encourages deception, not sincerity ; a dis-  
 harmony between the movements of mind and tongue.  
 regard to reading, can supply a defect in understand-  
 read. Rhetorical directions, though they should equal

the variety of musical notation, would not suffice to indicate the slow or swifter enunciation of emphatic or unemphatic words, or the modulations of the human voice, which are said to amount to hundreds of thousands in number. Inflections and the rate of utterance are too volatile and changeful to be guided by rules ; though perceptible, they are indescribable. All good reading of dramatic or poetical works springs from emotion. Nothing but the greatest histrionic power, can express an emotion without feeling it. But, once the subject-matter of the reading lesson be understood, and, almost universally, nature will supply the proper variations of voice. A child makes no mistakes in talking, for the simple reason, that he never undertakes to say what he does not understand. Nature is the only master of rhetoric on the play-ground. Yet there, earnestness gives a quick and emphatic utterance ; the voice is roughened by combative feelings ; it is softened by all joyous and grateful emotions, and it is projected, as by the accuracy of an engineer, to the ear of a distant play-fellow. Nay, so perfect are undrilled children in this matter, that if any one of a group of twenty make a false cadence or emphasis, or utters interrogatively what he means to affirm, a simultaneous shout proclaims an observance of the blunder ; yet, if the same group were immediately put to reading from some of our school books, their many-sounding voices would shrink from their wide compass, into a one-toned instrument ;—or, what is far worse, if they affected an expression of sentiment, they would cast it so indiscriminately over the sentences as to make good taste shudder. Occasionally, in some of the reading-books, there are lessons which scholars fully understand ; and I presume it is within the observation of every person, conversant with schools, that the classes learn more from those lessons, than from the residue of the book. The more such lessons are reached, the dull machinery quickens into life ; the moment they are passed, it becomes droning machinery again. In the mechanical part of reading, therefore, is dependant for all its force, gracefulness and variety upon the mental.

There are other features of our reading books, too important to be unnoticed, even in a brief discussion of their merits. Two prominent characteristics are, the incompleteness of the subjects of the reading lessons, considered each by itself ; and the discordance



when viewed in succession. Lord Kaimes maintains, that there is an original, instinctive propensity or faculty which demands the completion or finishing of what has and is displeased by an untimely or abrupt termination. Physicians attest the same doctrine. Whether such mental native or superinduced, its practical value can hardly be ; and whatever conduces to establish or confirm it,ulously fostered. In our state of civilization, all ques-come complex. Hence, an earnest desire to learn all consider all the principles, which rightfully go to modify is a copious and unfailing source of practical wisdom. comes, not from any mistake in our judgments, upon the en ; but from omitting views, as much belonging to the those which are considered. We often see men, who one part of a case with signal ability, and yet are always , because they overlook other parts, equally essential to it. Thus error becomes the consequence of seeing only th. Often, the want of the hundredth part to make a ers the possession of the other ninety-nine valueless. If vere left out of our astronomical computations, the mo-solar system could not be explained, though all about the perfectly known. Children, therefore, should not only out habituated, as far as possible, to compass the subject to explore its less obvious parts, and, if I may so speak, avigate it ; so that their minds will be impatient of a want eness and thoroughness, and will resent one-sided views esentations. Merely a habit of mind in a child of seeking nected, well-proportioned views, would give the surest great man. Now, if there be such a tendency in the hu-urging it to search out the totality of any subject, and re-ccess, not only with utility, but with a lively pleasure, is ling pupil defrauded both of the benefit and the enjoyment, is mind forcibly transferred, in rapid succession, from a s of one subject to as few glimpses of another ? On a majority of the reading books in our schools, I believe und, that they contain more separate pieces than leaves. e pieces are antipodal to each other in style, treatment and

subject. There is a solemn inculcation of the doctrine of universal peace on one page, and a martial, slaughter-breathing poem on the next. I have a reading book, in which a catalogue of the names of all the books of the Old and New Testaments is followed immediately, and on the same page, by a "receipt to make good red ink." But what is worst of all is, that the lessons, generally, have no any logical sense, either a beginning or an end. They are splendid passages, carved out of an eloquent oration or sermon, without premises or conclusion ;—a page of compressed thought, taken from a didactic poem, without the slightest indication of the system of doctrines embodied in the whole ;—extracts from forensic argument without any statement of the facts of the case, so that the imagination of the young reader is inflamed, while those faculties which control the fitness and relevancy of the advocate's appeals are wholly unexercised ;—forty or fifty lines of the tenderest pathos, unaccompanied by any circumstances, tending to awaken sympathy, and leaving the children to guess both at cause and consolation ;—and no dramatist dares violate an absurd rule, that every tragedy worthy for the stage, shall have five acts, a single isolated scene, taken from the middle of one of them, seems to be considered a fair proportion for a child. Probably in a school of an average number of scholars, three or four of these pieces would be read at each exercise, so that even if the pieces were intelligible by themselves, the contradictory impressions will effectually neutralize each other. Surely, if, according to Lord Kaimes, there be an innate desire or propensity to fiction, we should expect that the children would manifest it, in such a manner by desiring to have done with the book forever.

What the ancient rhetoricians said of a literary work,—that it should always have a beginning, a middle, and an end,—is more philosophically true of reading lessons for children. Each piece should have the completeness of a fable or an allegory. Were a single picture cut from the historic canvass of some master painter, and presented to us by itself, we should suffer vexation from the blankness of the mutilated part, instead of enjoying the pleasure of a perfect whole.

But, perhaps it will be said that children like variety, and therefore, a diversity of subjects is demanded. But there is a wide

een what is variegated and what is heterogeneous or con-  
 te as well may it be said, that children like continuity,  
 variety. Agencies working to a common end, elements  
 d evolving into a full and symmetrical development, pre-  
 y more accordant to nature, than that of patchwork. An  
 ding transition from topic to topic, is far preferable to a  
 sion, which seems, as it were, to arrest the mental ma-  
 work it backwards. Besides, all needful variety is as at-  
 long pieces, as in short ones. An author may pass from  
 umorous, from description to narration, from philosophi-  
 ralizing, or even from prose to poetry, without shocking  
 y precipitous leaps from one subject to another.

mental exercise of the highest value, is not only over-  
 rendered wholly impossible by this violent transference  
 d through a series of repugnant subjects. The true order  
 advancement is, from the primitive meaning of words to  
 fied meaning in particular connections, and then to a clear  
 on of the import of sentences and paragraphs. After these,  
 other mental processes, which are the crowning constitu-  
 ellectual greatness. The first process is a comparison with  
 , of all the parts presented, in order to discern their agree-  
 pugnance, and to form a judgment of their conduciveness  
 sed result. For this purpose, the mind must summon the  
 of thought into its presence, and see for itself, whether the  
 is authorized, to which its assent is demanded. Here the  
 t see whether the part, he now reads, as compared with  
 ing, is consistent or contradictory. Otherwise he may be  
 d counter-marched through all regions of belief, and even  
 tread backwards in his own footsteps without knowing it.  
 juror judge of the soundness or fallacy of an advocate's argu-  
 cannot reproduce it and compare its different points ;—if he  
 military phrase may be used, bring up the long column of ar-  
 d deploy them into line, so as to survey them all at a glance ?  
 t of mind confers a wonderful superiority on its posses-  
 erefore it should be cultivated by all practicable means.  
 is in some men, it has grown up, under favoring circum-  
 m the feeblest beginnings ; and the minds of all children



may be managed so as to stifle or strengthen it. Of course, all secutiveness of thought is dispersed by a scrap book.

I will take a few examples from a reading book, now in use in our schools. A most humorous disquisition "On the head of ladies," is immediately followed by another disquisition "future state of eternal happiness or perdition;" a passage from ton's "Creation of the world," leads on "The facetious history of John Gilpin;" Thompson's "Hymn to the Deity," ushers in "Merrick's chameleon;" and two minutes reading from Blair's "Sermon on the death of Christ," precedes Lord Chesterfield's "Speech on Pensions." Surely, the habit of mind, I have endeavored to describe, is here impossible. There is no continuity in the subject-matter for the mind to act on.

The preceding remarks contemplate the reader or hearer, as engaged in fixing the whole train of the author's thought in his mind, for the purpose of comparing its different parts. But to read in the highest degree valuable, another mental process still is necessary. It is not enough merely to discern the agreement or disagreement of the associated parts, heard or read; but in the progress of the exercise, we ought to look to the right and left, and compare the position of the speaker or writer with our own observation, experience and former judgment; so as to obtain new arguments for our own opinion where there is a coincidence, and be led to re-examine them with scientific impartiality when opposed. In this way only, can we rectify and correct our own views by the help of other minds. In this way only, can we give permanence to our acquisitions; and what rapidity in acquisition, without durability in retention? It is the absence of these two mental exercises which makes so vast a portion of the reading of our community utterly barren. Of course, only older scholars can fairly realize this degree of intelligent reading. But after a little practice, all children are capable of reading with an open and inquiring mind, that if any thing occurs in the lesson which is connected with their own recent experience or observation, the two things will be immediately associated. This will grow into a habit of thinking not only of what they read, but of associating and comparing their previous knowledge upon the same subject with what they read, and it will be the best possible stimulant to the inventive powers.

t them from blindly adopting whatever is communi-  
 by others. They will acquire such a power, at once  
 ews and of thorough investigation, that if afterwards, in  
 business of life, any plan or course of policy is pre-  
 a, and there be a difficulty in it, they will see it ; and  
 ny way of obviating that difficulty, they will see that

e the calamity of unintelligent reading, various inventions  
 ught out ; by some of which it may have been slightly  
 ile others seem wholly illusive. Spelling books have  
 ed, purporting to give synonymous words, arranged in  
 mns. On some pages, two columns, on others, three  
 found, where the words, which are placed horizontally,  
 each other, are alleged to be synonymous. Thus single  
 pposed to be defined by single words, as in the follow-  
 , which is taken from one of them :—

“ *comedy      tragedy      drama* ”

mark of Dr. Blair, that “ hardly in any language are there  
 that convey the same idea.” Dr. Campbell, also, the  
 t able work, “ *The Philosophy of Rhetoric*,” observes,  
 are few words in any language, (particularly such as relate  
 s and feelings of the mind,) which are strictly univocal.”  
 ildren that any considerable number, even of the primi-  
 n the English language, can be reduced to doublets and  
 ynonyms ; or that there are many cases, where words  
 rchangeably used, would subject them to the certainty,  
 ng mistaken by others, and of mistaking whatever they  
 or read ; and it would destroy the power of aptness in the  
 words, upon which all the accuracy, elegance and force  
 pend. Surely, if a large majority of the words of our  
 re each, one or two synonymous words, it would seem ad-  
 be government of the “ *Republic of Letters*,” at once to  
 one half or one third of its present bulk, by discarding  
 ous parts, and thus save the young the labor of learning  
 the trouble of writing and reading a double or treble-sized  
 But if, as is further observed by Dr. Blair, any person  
 with the propriety of the language, will always be able

to observe something, that distinguishes any two of its words," a book would be greatly to be preferred, which should show that has no synonyms. Even if our language furnished synonyms, these were carefully collated, according to the above plan, it would seem quite as possible for the learner, with a little additional labour, to get two or three words, without any glimmer of meaning, as to get one. It is rarely possible to explain any word of unknown meaning by any other single word. Our most common words are susceptible, probably, of a hundred significations, according to the connexion in which they are used. Their value is constantly changing according to the context. It is like the value of pieces upon a chess-board ; the same piece, in one position, being almost worthless in another position, commanding the game. It is this fact, which makes it such vanity and uselessness to read words, without reference to their significations.

Another method for teaching significations consists in the use of the dictionary. This is far less fallacious than the former, because no dictionary ever defines by a single word. It usually gives a number of words and short sentences, from a comparison of which the principal idea, common to them all, can be separated from the accessory ideas, peculiar to each. Although, therefore, it is a meagre source for a learner, it is far better than any definition, by a single inflexible word, can be. There are, however, very serious objections to this mode. Should the pupil take the words of the dictionary, in course, he would study double the number which he will have occasion to use in after-life ; and it seems a misfortune, that scholars who do not go to school half long enough to learn what is necessary, should spend half their time while there, in learning what is superfluous. Nor do dictionaries indicate what words are in reputable use, what is more appropriate to poetical, what to prose writings, and so forth. Should the words to be studied or omitted be marked for the learner, or a dictionary be prepared, containing the former only ; still a considerable superable objection would remain, in consequence of the disorder, rather the entire want of order, in regard to meaning, in which the words are presented. For, while the words come alphabetically, the ideas come chaotically. The learner is whirled backwards and forwards, carried through time and space, presented with matter



al and incident, action and passion, all in a single column can be conceived more heterogeneous, than the ideas resulting from an alphabetical arrangement of the words ; children to be drilled at much length on such exercises, it is a great soundness of mind, if their intellects were not a little. Suppose a professor in the natural sciences, instead of his sciences in a natural order, should go into the fields, any where, at random, should take a spot no larger than that for the growth of a single blade of grass, and should procure upon whatever was found at that single point. He is obliged to run over the subjects of geology, mineralogy, botany, and perhaps entomology, without leaving the spot. Let this be a course half so devious and erratic, as that of definitions, through the columns of a dictionary. The device to fill vacuity by pouring in vacuity, is this ;—a prepared, in which the spelling and reading lessons alternate with a few columns of words, and then a page of apologetic synopses of universal truths, not occupying, perhaps, a line each ; some one word in the spelling columns being introduced into each of these short sentences. The force of the contrast to the preceding mode is but little abated, when applied to this motley company of sentences repels all interest on the part of the learner. Topics, more alien from each other and more remote from the mind, could not be found, if one were to stick a pin through all the leaves of a book and then to read continuously all the words, through which the puncture was made. As many-coloured and diverse-shaped objects, flitting swiftly before the eye, will produce no durable impression upon the retina ; so a multitude of incongruous ideas and feelings, trooping hurriedly before the mental vision, will leave no enduring traces of outline, aspect or quality upon the mind. The rapid succession of discordant images will inflict distraction upon the mind of an adult ;—how much more certain are they to do so in that of a child ? The power of passing abruptly from one subject of thought to another, without mental disturbance, is a habit and familiarity with the matters presented. Children are not capable of either.

I do not occupy further time in exposing empirical plans for

acquiring a ready and apposite use of our language. After experimenting with every scheme, I believe we shall be driven back to a single resource ;—and not reluctantly, for that resource is sure and adequate. Language is to be learned, where it is used ; as skill in handling implements of an art, is acquired by practising with them upon appropriate objects. It is to be learned by conversation, and by the daily reading of such books, as with the aid of free questioning on the part of the pupil, and full explanations on that of the teacher, may be thoroughly mastered. The ideas of the learner are to be brought out and set, objectively, before his own eyes, like a picture. An error can then be pointed out. The boundary line can be traced between his knowledge and his ignorance. A pupil may recite a lesson with literal correctness, respecting the boundaries of the different States of the Union ; and it may be impossible for the teacher to determine whether this is done by a mental reference to divisional lines and adjacent territory, or whether it is done by remembering the words as they stand in the geography. But if the pupil can delineate a correct map of the United States, on a blackboard, it is then certain, that he has the prototype of it in his mind. So if the pupil applies language to something, known to both parties, the teacher can then perceive *whether the language is adjusted to the thing* ; and, if it is not, he can ascertain whether the error arises from a misconception of the thing, or from an unskilful use of words in describing it. Instruction, therefore, to some extent, respecting known objects, such as can be graphically described, should precede reading, and should accompany it ever afterwards, though, perhaps, with diminishing frequency. Early practice, in noting the real distinctions and qualities of sensible substances, will give accuracy to language when the child passes from present and sensible objects to unrepresented mental ones, a previously acquired accuracy of language will impart accuracy to the new ideas. Hence, too, the scenes of the first reading lessons should be laid in the household, the play-ground, and the occupations of men, and the surrounding objects of nature, so that the child's notions can be rectified at every step in the process. This rectification will be impossible, if the notions of the pupil are not brought to no common and intelligible standard. We must believe, too, that the Creator of the human mind, and of the material



it is placed, established a harmony and correspond-  
 them ; so that the objects of nature are pre-adapted to  
 ment of the intellect, as the tempers, dispositions and  
 ne family are to develop the moral powers. The ob-  
 al history,—descriptions of beasts, birds, fishes, insects,  
 , and unorganized substances, should form the subjects of  
 intellectual lessons. A knowledge of these facts lays the  
 or a knowledge of the principles or sciences, which re-  
 row out of them. We are physically connected with earth,  
 ight ; we are dependant, for health and comfort, upon a  
 of their properties and uses, and many of the vastest struc-  
 intellect are reared upon these foundations. Lineally related  
 the whole family of the useful arts. These classes of sub-  
 ot only best calculated to foster the early growth of the per-  
 entive and reasoning powers ; but the language appropriate  
 eludes vagueness and ambiguity, and compels every mis-  
 tray itself. Voyages and travels, also, accompanied as  
 s should be, with geography, present definite materials,  
 ought and expression. Just as early as a habit of exact-  
 ed in using words to express things, all the subjects of  
 ess may be successively brought within the domain of in-  
 The ideal world can then be entered, as it were with a  
 hand, and all its wonders portrayed. Affection, justice,  
 impartiality, self-sacrifice, love to man and love to God,—  
 out into action,—can be illustrated by examples, after the  
 acquired a medium, through which he can see all the cir-  
 , which make deeds magnanimous, heroic, god-like.  
 iography of great and good men belongs. This is a de-  
 f literature, equally vivifying to the intellect and the mor-  
 wing useful knowledge and inspiring noble sentiments.  
 of the language appropriate to it almost belongs to another  
 ervid, electric, radiant. At the earliest practicable pe-  
 nposition or translation be commenced. By composi-  
 t mean an essay "On Friendship," or "On Honor ;" nor  
 g Miss of twelve years should write a homily "On the  
 een," or a lad, impatient of his nonage, "On the short-  
 n life ;"—but that the learner should apply, on familiar

subjects, the language he thinks best, to the ideas and emotions he perceives clearest and feels strongest, *to see how well he can make them fit each other*,—first in sentences, or short paragraphs, then in more extended productions. If the pupil's knowledge outruns his language,—as is often the case with the most promising,—then more copious diction is to be sought; but if language overruns ideas, it is to be reduced, though it be by knife and cautery.

It is only in this way,—by reading or translating good authors, aided by oral instructions and by lexicographers, but, most of all, by early habit,—that any one can acquire such easy mastery over the copiousness and flexibility of our mother tongue, as to body forth, definitely, and at will, any thought or thing, or any combination of thoughts and things, found in the consciousness of men, or in the splitude of nature;—in no other way, can any one acquire that tenseness and condensing force of expression, which is a constituent in the highest oratory, which clusters weightiest thoughts into briefest sentences, reminding without repeating, each sentence speeding straight onward to the end, while every salient epithet opens deep vistas to the right and left;—and, in this way alone, can any one ever learn the picture-words of that tongue, wherewith the poet repays nature fold for all her beauties, giving her back brighter landscapes, clearer waters, and sweeter melodies, than any she had ever shown to him. By such processes alone, can one of the most wonderful gifts of God,—the faculty of speech,—be dutifully cultivated and enlarged.

It would be rendering a useful service, to follow out, rightly, in detail, the natural consequences of this imperfect manner of teaching our language, after the children have passed from the enforced routine of the school room, to a free choice of their own intellectual amusements and recreations. I can here only hint at them. The language of sensation and of appetite is common to all. Even the most illiterate are familiar with it. Every one, too, either from his own experience, or from the observation of others, is made acquainted with the emotions of fear, hope, jealousy, anger, revenge, and with the explosive phraseology in which those passions are vented. Now the diction, appropriate and almost peculiar to the manifestation of the coarser and more animal part of our nature, is almost

ough it were a separate language, from the style, in which social right and duty, questions of morals, and even of when popularly treated; are discussed. Young minds ment, and, to very many of those, who are just entering tage of life, books furnish the readiest and the most reputas for mental stimulus. What else, then, can reasonably ed, than that the graduates of our school rooms, who, by a knowledge of the coarser and more sensual parts of our possess a key to that kind of reading, which is mainly con- with the lower propensities of human nature, should use the which they have been furnished, to satisfy desires, which, imparted. But, having no key, wherewith to open the of intellect, of taste, of that humane literature, which is pu- the dross of base passions, they turn away from these el- comes, in weariness and disgust, and thus stifle the better of their nature. These treasures are locked up in a lan- do not understand; and no person will long endure the of reading without thought or emotion. May not this ex- rt, at least, why our youth of both sexes, who wish to know or to appear to know something, of what is called the litera- day, spend months and years over the despicable "love" books, by which the reading portion of mankind is so ted;—books, which inflame passions and appetites, that enough by nature, while they blind and stupefy every fac- timent, which exalt the character into wisdom and ex- The most limited fund of words, and a mere intellectual powers of thought, are abundantly sufficient to enable rstand a bucanier's history and all its intoxicating in- piracies, murders, and scuttled ships;—or, to get vivid athsome crimes, perpetrated by the unfortunate victims of d of vicious institutions. For the readers of such books, ds in the world might as well have never been created. nt course of training, many of our youth, whose imagina- v revelling over these flagitious works, might have been high enjoyment won from companionship with noble from a study of their own spiritual natures, or from an in-

vestigation of the sublime laws of the material universe, and operation of its beneficent physical agencies.

Another large class of our citizens scarcely consult any other either for their literature or for their politics, but the daily newspaper. Wholly ignorant of the language, in which argumentative and profound disquisitions, on subjects of policy or questions of government are carried on ; why should we wonder, that so many of them take less interest in dispassionate, instructive appeals to reason, than in the savage idioms of party warfare ? The states of mind thus excited are wholly incompatible with discriminating judgment, with impartiality, with that deliberation and truth-seeking anxiety, which are indispensable to the formation of correct opinions and which lead to conduct, worthy of free citizens. I would not attribute too efficient an agency to this cause, but if it only tends to such disastrous results, by the slightest approximation, it furnishes another powerful argument for a thorough reform in our practice.

During the first year of my officiating as Secretary of the Board, very numerous applications were made to me, from almost all parts of the State, to recommend class books for the schools, or to state what books were considered best by the Board, or by myself. As the Board had adopted no order, nor were invested with any express authority, by law, upon the subject, I uniformly abstained even from expressing any opinion ; but for the purpose of learning, authentically, what were the prevalent views of the community, I inserted in my last circular to the school committees, the following question : " Would it be generally acceptable to the friends of Education in your town, to have the Board of Education recommend books for the use of the Schools ? " This gave to school committees an opportunity to consult with the friends of Education, in their respective towns, and opened a way to obtain a full and fair representation of the wishes of the public. From this, as the principal source of information, somewhat corroborated and extended by other means, it appears, that the friends of Education, in twenty towns, containing in the aggregate, a population of about thirty-five thousand inhabitants, declare that such a recommendation would not be acceptable. In one containing eighteen thousand inhabitants, they say, " we feel so well satisfied, with our own selection of books, as to have no wish



to see how far the views of different practical men in towns wish to have the Board *recommend*, but not to towns, to have the Board *recommend* and *prescribe*; the Board may be directed to *prescribe* by an act of the Legislature. It also appears, that the friends of Education in more than seven-eighths of the population of the State are in favor of having the Board of Education *recommend* the use of the Schools.

The expediency of a *recommendation*, by the Board, of classing the schools, leaving it optional with the committees to accept the recommendation or not, is a question so exclusively of the competency of the Board, that I shall not presume to express an opinion concerning it. Considerations, for and against such action, may be supposed to bear with different degrees of regard to different species of books;—as geographies, and spelling or reading books. In my Report of last year, I mention some of the very serious inconveniences, resulting from the multiplicity of books, now in use. I will here only add, that the Board should assume the labor of examining and recommending the kind of school books, I trust they will not allow so favorable an opportunity to pass, without securing a better quality of workmanship, than go to the formation of some books.

It is too obvious to be mentioned, that in case of a change of books, they would be furnished much cheaper than at present. Measures would, of course, be taken, to prevent mo-

Now now stands, in order to entitle a town to receive its share of the income of the School Fund, the committee require the town, that the town, "at their last annual meeting, raised \$1000 dollars, to pay the wages of instructors solely." In the last "Annual Abstract," I found this certificate the subject of frequent alteration. Although the law prescribed a certain oath, as a condition precedent, the school committees would not administer it, and then made oath to a form unknown to the law. It was, that very few towns raised money "to pay the wages of instructors solely," and, therefore, though they had raised a sum for schools to entitle them to a share of the fund, they

had not raised it in the particular form, contemplated by the certificate.

I endeavored this year to ascertain the form of the vote, adopted by the towns, in raising school money. Owing, however, to a non-compliance on the part of many school committees, with my request, I have obtained a copy of the forms used the current year, from only one hundred and ten towns. But six of these one hundred and ten towns raised money "to pay the wages of instructors solely." In almost all the others, the terms used are "for the support of the schools," or some equivalent expression. It is very desirable, that the certificate should be conformed to the vote, or the vote to the certificate.

In my Report of last year, I exposed the alarming deficiency in moral and religious instruction, then found to exist in our schools. That deficiency, in regard to religious instruction, could only be explained by supposing, that school committees, whose duty it is to prescribe school books, had not found any books at once, exempt from the tory of the doctrines of revealed religion, and, also free from the advocacy of the "tenets" of particular sects of Christians, as brot them, in their opinion, within the scope of the legal prohibition. And hence, they felt obliged to exclude books, which, but for their denominational views, they would have been glad to introduce. No candid mind could ever, for a moment, accept this as evidence of an indifference to moral and religious instruction in the schools; only as proof that proper manuals had not been found, by which the great object of moral and religious instruction could be secured, without any infringement of the statutory regulation. The time for the committees to make another return, not having yet arrived, it is impossible to say, whether books, having the above object in view, have been since introduced into any more of the schools. I am happy, however, to say, that a knowledge of that deficiency, then for the first time exposed to the public, has turned the attention of some of our friends of Education to the subject, and that efforts are now making to supply the desideratum. Of course, I shall not be here understood, as referring to the Scriptures, as it is well known, that they are used in almost all the schools, either as a devotional or as a reading book.

second Report, inspired by opposite reasons to reasons in this sacred cause ;—being not more encouraged already been accomplished, than stimulated by what one.

HORACE MANN,

*Secretary of the Board of Education.*

ec. 26, 1838.





.....No. 14.

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# MEMORIAL

OF

HILLIPS, SAMUEL DORR, JOHN C. WARREN,  
M. E. CHANNING, JOSEPH TUCKERMAN,

AND

*One Hundred and twenty-eight Others,*

TIZENS OF BOSTON,

IN FAVOR OF

MAINTAINING THE LAW OF 1838,

REGULATING THE SALE OF

STUOUS LIQUORS.

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## MEMORIAL

*Honorable Senate and House of Representatives,  
in General Court assembled :*

Resigned, inhabitants of Boston, have observed with concern and alarm, the efforts that are making to procure the repeal of a statute passed by the last Legislature, "act to regulate the sale of spirituous liquors." This has been regarded by your memorialists as a most honorable action to this Commonwealth. It has given them to be no more than a public and solemn declaration on the part of this community, of the prevalence of the christian world. There is hardly a country on the globe, whose attention is not directed to the means of checking intemperance in the use of spirituous liquors, impelled by the overwhelming evidence of the deleterious effects—effects appalling and deadly to the human mind. To dwell upon them would but bring to the minds of us all, recollections that may well be

Our country was particularly called upon to be forewarned to attempt to abolish the use of alcohol as an intoxicant, inasmuch as our former legislation operated as a direct encouragement and legal sanction to the sale of spirituous liquors. Even now it can hardly be believed that future times will regard with amazement the

#### 4 MEMORIAL OF J. PHILLIPS & OTHERS. [

fact, that the laws of Massachusetts set apart a class of men expressly licensed to sell spirits *as a drink* for public good. Yet it is but too true—such are the provisions of an act which has been repealed within a year, which is still in operation in this city, and which it is the intention of the opponents of the present law, if possible, to restore to the statute book.

This leading and shocking feature in the late licensing law, applies in its operation to all parts of the State, but there were other provisions of that act which operated unequally, and were especially grievous to the inhabitants of the city of Boston. It empowered the commissioners in other parts of the State, and the magistrates and aldermen of the city of Boston, "to grant licenses to as many persons to be retailers of spirits as they think the public good may require."

Under this provision, the force of public opinion in several counties has led to the entire prohibition of the sale. This is far from being the case in the city of Boston. This place is the great centre of the importation of spirits from abroad, as well as of the distillation of the domestic article; and furnishes, like all great cities, peculiar facilities for carrying on the sale. Here is a large class of persons active, powerful and wealthy, directly interested in the traffic, either as importers, distillers, retailers, victuallers, or as the owners of estates tenanted by tenants who follow these occupations. The prohibition of the sale in other parts of the State, only adds to the number of a portion of this class of persons in Boston. Large quantities of spirit are purchased and sent into the country from this city, to feed the craving appetite of those who have acquired the habit of drinking, and cannot find a cure the means of indulgence at home.

strong body of interested individuals against hardly a hope that our city officers for many years, would exercise the discretion given them by law, to refuse licenses altogether. In the future must your memorialists see their children and grandchildren tempted to their ruin, with the sanction and approval of the State. *They trust not.* Nor is the City of Suffolk alone concerned in this part of the operation of the late license law. While the capital continues to be the head quarters of the trade, no effectual benefit is realized in those parts of the State where licenses are refused. Such is now the intercourse between the city and the interior, that no man's family is safe. A man who has been kept from the temptations to intemperance in the country, no sooner enters the city, than he is beset by the enticements which a legalized spirit dealers hold out before him.

Memorialists therefore entreat, that the new license law, which extends its protecting shield over the inexperienced, and favors the lovers of good liquor and sobriety equally in every section of the Commonwealth, may by your wisdom be approved and sustained. This they confidently hope will be done, for they do not for a moment suppose that Massachusetts will re-establish a law which expressly declares, that persons may annually be set apart by public auction to dispense ardent spirits as an article of drink for the good of the people.

More might be said of the evils of licensing the sale of alcohol as a drink. We might enlarge on the absurdity of providing by law for the promotion of good education and virtue, while the same code expressly permits the sale of the most demoralizing of all arti-



## **6 MEMORIAL OF J. PHILLIPS & OTHERS. [Jan.**

cles. We might point out in detail, the cruelty as well as gross inconsistency of punishing with fine and imprisonment the vice of drunkenness, while the traffic in potent spirits for the purpose of intoxication is fostered and promoted by legal enactments. But we forbear, fully relying on the Legislature that the great cause of public morals will be firmly and ably supported.

**JONATHAN PHILLIPS,**

**And Twenty-two Hundred and Twenty-two Others**







**SENATE....No. 15.**

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**Commonwealth of Massachusetts.**

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**In SENATE, Jan. 18, 1839.**

**That the Committee on the Judiciary, con-  
diency of making any alterations or amend-  
law relating to the Transfer of Stock in  
g and other Corporations, and also relating  
of Certificates of such Stock.**

**Attest,**

**CHARLES CALHOUN, *Clerk.***



# Commonwealth of Massachusetts.

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One Thousand Eight Hundred and Thirty-Nine.

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## AN ACT

Shares in the Capital Stock of Corporations.

*Enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the people, as follows :*

Any corporation, or joint stock company, that is to be incorporated under the authority of this Commonwealth, may, in all cases in which it is now provided by law that the several shares of its capital be numbered, or that the transfers of such shares be acknowledged before a justice of the peace, comply with said requisites by its by-laws, and may give the form of certificates and mode of conveying such shares ; also, by what officer or officers such certificates shall be signed and issued, and in what manner and by whom transfers of its stock shall be made.



E.....

.....No. 16.

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COMMUNICATION

FROM THE

A N D A G E N T .

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**Commonwealth of Massachusetts.**

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HON. MYRON LAWRENCE,  
*President of the Senate,*

SIR:—I beg leave to transmit through you, to the Legislature, the enclosed Report, with the request that you will have the goodness to lay the same before the honorable Senate.

Very respectfully,

Your obedient servant,

GEO. W. COFFIN, *Land Agent*

*Land Office, 25th Jan. 1839.*

*able Senate and House of Representatives  
Commonwealth of Massachusetts :*

igned, Land Agent, had the honor a short report to His Excellency the Governor, a ment of the proceedings in relation to the during the last year, which report I believe the honorable Legislature.

tations for the purchase of the public lands e past, have been very considerably diminish- om the uncommonly embarrassed state of the or two years back. The effect of which has ously felt, by that enterprising class of our have generally been adventurers, and taken terest in the public lands in the State of e revival of business in this section of the not yet been sufficiently felt further east, so ce immediate speculations in wild lands. ow beginning to have a more healthy aspect a country, which is clearly indicated by more e lumbering community, and the increased mber. We concluded during the suspension on of commerce, that it would be most for f the States of Maine and Massachusetts, to ic lands out of the market as much as possible, vorable opportunity offered for making sales.

the prospect brightens considerably, it is



## LAND AGENT'S REPORT.

highly probable that sales to a limited extent may be effected on reasonable terms. This Commonwealth has at this time a separate interest in about twenty townships of land, or four hundred and sixty thousand acres, and lying immediately north of, and adjoining to the present settlements in Maine. A joint interest with the State of Maine in about eighteen townships, or four hundred and fourteen thousand acres, lying more remote from settlements, and also, in a large tract of land which has been surveyed into townships. A portion of these lands may be sold the approaching season, without disadvantageous terms. But as all the lands have not been ready sold, which were authorized to be disposed of under the authority given by the resolve dated 25th March 1834, and other previous resolves, it follows of course that no more of the public lands held in severalty by the Commonwealth, can be sold until further order of the Legislature ; I would therefore most respectfully recommend that further authority should be granted, for the sales of a limited number of townships, on the usual terms and conditions.

There are twenty-one townships, or four hundred and eighty-three thousand acres owned in severalty by the Commonwealth, north of the before mentioned townships, and a large tract of unsurveyed land owned in common and undivided with the State of Maine, lying west of the townships, and all lying within the bounds of the territory claimed by Great Britain, with which the existing laws of this Commonwealth prohibit any interference with the ownership therein, till the boundary question is settled until further order of the General Court. In the meantime, while we are waiting the tardy negotiation and settlement of that question, the principal value



which consists mostly in its growth of timber, removed from the soil beyond the reach of our and jurisdiction. There is however one satisfaction that a part of said territory is now brought more immediately under our supervision and protection, by reason of the Penobscot road having been continued quite through the Penobscot river, so that we have now the valley of the river within the reach of the laws of the State of Maine. The exercise of which laws, so far as they are applicable for preventing the depredation of trespassers, I am fully approved by the authorities of the Province of New Brunswick, who are willing, and will render every aid in their power in stopping the progress of trespassers.

A large tract of land which is unsurveyed and undivided in moieties by the two States, and lying in the debatable territory, is remarkable for its natural advantages for internal improvements, having many lakes, ponds and streams, which are capable of being connected by artificial means, at small expense, viz. by digging two short canals, each not exceeding sixty feet in length, one connecting lake Telos with Webster's lake, the other lake Pumgockamock with the source of the lower branch of Penobscot river and building a dam at the outlet of Chamberlain lake, will make a connection that will permit the growth of at least fifteen thousand acres of land (which are heavily timbered) to be brought into the Allaguash waters into the Penobscot river and thereby increase the value of that immense tract to an incalculable degree.

In the disposition, management and protection of the lands, the State of Maine has uniformly moved in accordance with the views and measures of this Common-

wealth. The authorities of that State have ever expressed in the strongest terms, their acknowledgments and approbation of the liberal policy which has always been displayed by this Commonwealth in promoting and advancing the general interest. But in relation to the settlers upon the public land, the interest of Massachusetts is quite at variance with the policy of this Commonwealth. They view the receipts into the treasury from the sale of lots of land to settlers, as quite a secondary consideration for each settler who takes up land and makes improvements thereon, adds wealth to the State, far greater than any consideration he would be likely to pay for his land. It is therefore their policy to quiet settlers for a small consideration, say seventy-five cents to one dollar a lot, three fourths of which they are allowed to carry off in labor on the public roads. I have considered the public interest of this Commonwealth required quite a different course, and have accordingly placed such value upon the lots taken up by settlers, as I thought was the true value or worth of each lot, situation and quality considered. When the settlers were ready to pay the valuation, I gave them a title. It is not to be expected, however, that the settlers would pay us from one to two dollars an acre, when they are accommodated at half that price elsewhere. It is not in all cases quite so commodiously. Many persons have taken up lots upon the Massachusetts town lands situated on the Aroostook road, and on the Aroostook river, without authority. They are now anxiously seeking to be quieted in their possessions; but a considerable number of these persons come within the operation of the provisions of the resolve passed the 10th day of March, 1825. Before any compliance with the wishes of this class of settlers can be granted, some modification of the

will be necessary, otherwise they will have  
oil, or remain on sufferance as tenants at will.  
desirable that a good class of settlers should be  
placed on the Aroostook road, to keep it in  
that class of persons generally speaking,  
settlers, who take up lots of land without any  
authority, are not always the most desirable  
they, however, as pioneers of the woods,  
with more easy for a better class to follow.  
I have herewith to transmit an account of the  
expenditures in this department, for the past

Which is respectfully submitted.

GEO. W. COFFIN, *Land Agent.*

*ice, 25th Jan. 1839.*





*of Massachusetts in account with GEO. W. COFFIN,*

*Dr.*

ash paid Ira Fish, to purchase supplies to be expended on the Aroostook road, . . .	\$500 00
ash paid Edward A. Snelling, for writing and endorsement in the Land Office and Library, from December, 1837, to date, . . .	120 00
ash paid expenses of journey to Bangor, . . .	53 54
at 16 days, . . .	48 00
ash paid J. C. Haynes, printer's bill, advertising lands for sale, &c. . . . .	5 75
ash paid Smith and Robinson, do. . . . .	2 50
ash paid William Howard's bill, looking after scaling timber, . . . . .	143 70
ash paid Ebenezer Webster's bill, for examining the Aroostook and St. John's rivers, for trespassers, &c. . . . .	118 91
ash paid Ira Fish's draft, on account of expenditures on the Aroostook road, . . .	1,000 00
ash paid Edward A. Snelling, for writing and endorsement in the Land Office and Library, to June, 1838, . . . . .	78 00
ash paid Ira Fish's draft, on account of expenditures on the Aroostook road, . . .	500 00
ash paid Ira Fish's draft, on account of expenditures on the Aroostook road, . . .	1,500 00
ash paid do. do. . . . .	500 00
ash paid expense of journey to the Aroostook and St. John's rivers, and to Quebec, . . .	122 13
at 31 days, . . . . .	98 00
ash paid Edward K. Butler's bill, securing lumber on Kennebec river, . . . . .	15 76
ash paid Ira Fish's draft, on account of expenditures on the Aroostook road, . . .	1,500 00
ash paid Jonathan Chase's bill, for looking after trespassers on the Aroostook river, . . .	24 38
ash paid Ira Fish, on account of expenditures on the Aroostook road, per receipt, . . .	1,500 00
ash paid expenses of journey to Bangor, . . .	31 74
at 14 days, . . . . .	42 00
ash paid Edward A. Snelling, for writing and endorsement in the Land Office and Library, to September, 1838, . . . . .	78 00
ash paid Ira Fish's draft, on account of expenditures on the Aroostook road, . . .	1,094 62
ash paid into the Treasury per receipts, . . .	3,121 56
ash paid Edward A. Snelling, for writing and endorsement in the Land Office and Library to date, . . . . .	78 00

*Account Continued.*

1838		
Dec.	14,	To cash paid Elijah L. Hamlin's draft, on account of expenditures on the Aroostook road, . . . \$1,06
"	22,	To cash paid E. L. Hamlin, do. . . . . 1,10
"	31,	To cash paid postage bill for 1838, . . . . . 1
"	31,	To amount for services as Land Agent one year, to this date, . . . . . 1,20
"	31,	To cash paid E. L. Hamlin sundry bills, viz : Expenses in the expedition to the Aroostook river, to expel trespassers, &c. . . . . 13 William Howard's bill on Bennett Logs, . . . . . 1 Expenses to Old Town on account do. . . . . Horse hire at Chadburne's, . . . . .
1839		
Jan.	3,	To cash paid into the Treasury as per receipt, . . . . . 1,05
		<b>\$16,86</b>

\$16,

*of Massachusetts in account with GEO. W. COFFIN,*

*C.*

balance of last year's account, . . .	\$621 45
Cash received of the Oriental Bank, commuta-	
tion for settlers on Township No. 5, 9th range	
North of Waldo's patent, . . .	661 44
Cash received of William Prescott, for deed of	
Long Island, . . .	75 00
Cash received at the Treasury, balance of the	
appropriation for the Aroostook road, per Re-	
solve 12th April, 1837, . . .	1,500 00
Cash received of Thomas L. Winthrop, com-	
mutation for settlers on the Plymouth Company	
township, . . .	503 23
Cash received of James Ruth, for lot No. 122,	
Township A., 2d range, 102 acres, . . .	102 00
Cash received of the Treasurer, on account of	
the appropriation for the Aroostook road, per	
resolve 4th April, 1838, . . .	2,000 00
Cash received do. do. . .	2,000 00
Cash received do. do. . .	2,500 00
Cash received of E. Webster and others, for	
advance on permits, . . .	250 00
Cash received of James Thissell and Samuel	
Loud, for lots in Township A., 2d range, . .	578 79
Cash received of sundry persons for timber	
and grass cut on the public lands, . . .	6,071 22
	<hr/>
	\$16,863 13

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\$16,863 13





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.....No. 17.

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PORT AND RESOLVES

CONCERNING THE

PUBLIC LANDS

OF THE

UNITED STATES.

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**Commonwealth of Massachusetts.**

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IN SENATE, Jan. 11, 183

*Ordered*, That a Committee be appointed to be joined by the House, to take into consideration the interest subject of our National domain, and the expediency of instructing our Senators, and advising our Representatives in Congress, to resist, by all the means in their power, the Bill now pending in the U. S. Senate, having ostensibly for its object the graduating the price of Public Lands,—and Messrs. BLAKE and GOODRICH were appointed on said Committee, on the part of the Senate.

Sent down for concurrence.

CHARLES CALHOUN, *Clerk*.

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HOUSE OF REPRESENTATIVES, Jan. 12, 183

Concurred, and the House join

MESSRS. KINSMAN *of Newburyport*,  
ARMS “ *Conway*, and  
HOWE “ *Rutland*.

L. S. CUSHING, *Clerk*.

**Commonwealth of Massachusetts.**

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**HOUSE OF REPRESENTATIVES, Jan. 28, 1839.**

That the Committee to whom was referred of a Bill, now pending in Congress, concerning Public Lands, be directed to consider the expediency of requesting our Representatives, and instructing them, to use their influence that the proceeds of the Public Lands may be divided among the States, to be used for the purposes of Education.

For concurrence.

**L. S. CUSHING, *Clerk.***

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**IN SENATE, Jan. 28, 1839.**

ed.

**CHARLES CALHOUN, *Clerk.***

**Commonwealth of Massachusetts.**

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SENATE, Jan. 30, 18

The Special Joint Committee to whom were referred the several Orders of the 11th and 28th inst. relating to the Public Lands of the United States, and to which was also referred the Resolutions of the State of Connecticut on the same subject, ask leave to submit the subjoined Report.

Per order,

GEO. BLAKE, *Chairman*

## REPORT.

ect referred to your Committee, in whatever  
 ay be viewed, is one of vast importance, and  
 e immediate and earnest attention of the peo-  
 United States. By documents recently laid  
 gress, it appears that the quantity of public  
 n the territory of the United States, to which  
 title has not yet been extinguished is 766,000-  
 of which 548,000,000 lie east, and 218,000,000  
 e west, of the Rocky Mountains. Beside this  
 ry, there are the following quantities, to which  
 titles have been extinguished, and to which it  
 ollected the scheme of graduation now before  
 will be applicable :

Ohio	2,110,405	acres.
Indiana	5,120,273	"
Illinois	20,609,825	"
Missouri	33,158,987	"
Alabama	20,123,405	"
Mississippi	11,795,441	"
Louisiana	17,766,880	"
Michigan	21,162,183	"
Wisconsin and Iowa	34,664,031	"
Arkansas	28,260,743	"
Florida	34,938,902	"
	<hr/> 229,711,075	

Such is the extent of that National domain, to which the attention of the citizens of the Union is now increasingly called, not only by the recent action of Congress and the present position of the question in that body, but by other ominous events which cast their shadows before it. There is perhaps something in the mere vastness of the territory, which is calculated to overtask the imagination and paralyze the judgment : and to this circumstance may in part attribute that remarkable indifference to this great subject, which may be observed in the country. But if we apply to it the sober verity of arithmetic, it will readily be seen to be one of those leading interests in comparison with which, most others sink into insignificance. At the Government price of our public lands, \$1 $\frac{1}{4}$  the acre, the value of the territory to which Indian title has not yet been extinguished, is nearly *one thousand millions of dollars*. According to the same basis of calculation, the value of those within the States and Territories just enumerated, and the object of the impending bill in Congress, is almost *three hundred millions of dollars*. The pressing question which is now brought before the country, and which asks for the consideration of the people, is, whether this fund, designed by our forefathers to be cherished for posterity, shall be wisely used, or wasted and frittered away in the gambles of political aspirants.

In order to appreciate this question in all its bearings, it may be well to consider in whom the title of this property is vested, and how the Federal Government came to have control over it. The public domain of the United States has been derived from three sources : 1. The cession made by Great Britain in the treaty of 1783. 2. The several States of the Confederation : 2. The



several States having claims under their ancestors to tracts of land beyond their actual settlement. 3. By the purchase of Louisiana and Florida from the French and Spanish governments. It may be added that Indian titles to portions of all these various tracts have been extinguished by funds drawn from the treasury of the nation, since the adoption of the Constitution.

It is easy to perceive, that the portion of this territory ceded by the British in 1783, being obtained by the sacrifice of their blood and treasure, belonged to the United States, by virtue of conquest. It passed, however, under the control of the General Government, and was set apart as a fund for the use and benefit of the several States. With a view to raise the credit and augment the resources of the Union, and thus enable the General Government to provide the means of paying the debt incurred by the war, more especially the portion of it, which was due for military services, the several States ceded their various claims to unoccupied territory to the United States, in almost every instance, without pecuniary consideration. To some of these cessions the States were annexed, but the object of all was the same, and is thus expressed by Virginia, in her ratification of the Constitution: "These lands shall be considered as a fund for the use and benefit of such of the States as have become, or shall become, members of the confederation, or federal alliance of the said Union, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for that use and for no other use or purpose whatsoever." The vast tract of territory included under the

name of Louisiana and the peninsula of Florida, which were acquired by purchase, it is only necessary to state that the consideration was paid out of the treasury of the Union.

From this brief view of the manner in which these lands came into the hands of the General Government it is obvious that they are the property of all the States and that they are only given into the control of Congress to be disposed of for the use and benefit of all. In respect to that large and important portion of these lands which was ceded by the several States, there appear to have been specific conditions imposed upon the General Government. It is true that these conditions rested upon the Government of the confederation of 1778: but the 1st section of the 6th article of the present Constitution provides, that "all debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the confederation, so that our rights and our duties with regard to this territory are the same, precisely, as they would have been, under the old confederation.

What, then, is the nature of the title of the United States' Government to these lands? They are held by trustees, holding and controlling this property, for the use of the United States, subject to the terms and conditions of their cession. In a strictly legal point of view, therefore the States claim not equal proportions, as tenants in common, but specific portions, according to the terms of cession. Congress is accordingly bound to dispose of this trust fund, as before remarked, according to the terms of cession, or if any latitude of construction may be given, according to the principles of common equity.



States made the sacrifices by which these purchased, it is obvious that under the operation of the rule, their claim to preference, if preference be given, is incontrovertible. Would not a gratuitous transfer to the new states be a trust, and a gross fraud, not only as contrary to the terms upon which these lands were ceded, but to the plain and established principles of justice? Would indeed such a grant be void in law and set aside, could be brought to the action of a court of law? And how much better than this supposed gratification is the bill, which proposes to give the same of the Western States and territories, advancing all others in the purchase of these lands? Is there any thing more than a deceptive artifice, by which and too palpable to be openly consummated, is actually achieved?

He remarked that these observations are intended, strictly, to those lands ceded by the several states, but it would seem that when a large extent of land is added to that which before belonged to the states, it should be subject to the same constitutional provisions, which governed in the management of the lands, held at the time of the adoption of the constitution. It has been so in all things relating to the land, and it would seem just and reasonable also, that it should be so as to soil. That this has been the construction of the Government is sufficiently shown by the fact, that in every estimate which has been presented of the cost and proceeds of the purchase, whether by the Secretary of the Treasury, or by the House of Congress, the money paid for Louisiana has been charged to the fund, arising from

the sales of other public lands. Thus it would appear that the proceeds of lands obtained by conquest or cession, have gone to purchase other lands, and it would seem a necessary consequence that these should be sold for the same purposes, and subject to the same conditions as those from which the purchase money was obtained.

But laying aside all questions of title, and all claims of preference, and considering these lands as placed without restriction in the hands of Congress, it is important to consider in what manner they might best be disposed of for the benefit of the country at large. In the first place, they are not needed for the use of the Federal Government. By their constitutional power to regulate commerce, levy taxes, &c., Congress virtually engrosses all the sources of revenue, and these have been found to be abundantly adequate to the exigencies of the Government. It should be borne in mind that the present administration, as well as the preceding one, has disclaimed the constitutional power to encourage internal improvements. All appropriations must be strictly and properly for national purposes. The ordinary revenue of the United States, if discreetly managed, must ever be sufficient for these objects. The avails of the public domain, then, are not needed for the expenses of the nation—nay, experience has proved that these may be absolutely mischievous. A few years since, the national treasury was found to contain a surplus of forty millions of dollars, arising from this source. And what a harvest of national evils have we reaped from this circumstance. Aside from the scramble among states and towns in the distribution of this money, let us consider the spirit of plunder which has been excited among the officers and agents of the Government, by the possession of

needed treasures. Consider the bloated currency, occasioned by the excessive debt of the Government in our local banks, the profligacy of speculation and gambling that was consequently engendered, and the final explosion which has thrown our commerce, as well as our national credit, in one general crash of bankruptcy. Such are the effects of pouring into the coffers of the Government, and subjecting to the unlimited control of Congress, the proceeds of our national domain. And this experience teach a lesson of warning that should not be disregarded? Is there any magic in the air which ensures us against the recurrence of similar calamities from similar causes. Is not the past the sure guide to the future, and if we continue to sow the seeds of ruin, will we not reap the whirlwind?

But the avails of our public lands are thus not necessarily lost, but mischievous in the national economy. How useful might they prove, if properly managed and distributed among the States, according to some equitable principle, and under some permanent system. If the lands were sold gradually, settled gradually, and managed as a prudent individual would dispose of his property, the average proceeds might be at least ten dollars annually, and this for centuries to come. Many of the lands, instead of being sold for a few dollars an acre, would ultimately bring five, ten, or even twenty dollars. Nor would this gradual disposition of the lands in any degree stint the wholesome growth of the country at large. It would, in fact, check that exodus of population from the old States which at present has unduly wasted and exhausted their resources, and at the same time it would prevent the un-

sound mushroom growth of the new States. Thus, evils to the East and West would be averted or diminished, and the real prosperity of the nation be advanced.

Let this subject be regarded in another point of view. Most of the States are now eagerly engaged in enterprises of internal improvement. Within a few years a new mode of intercommunication has been introduced by which the land is travelled with almost as great facility, and with far greater celerity, than the sea. It promises almost to annihilate distance, and bring far separated regions into daily and familiar communication. It is destined to render vallies and mountains and all the obstacles of nature, unavailing to separate mankind into tribes and casts, and to perpetuate sectional prejudices and national hostility. It tends not only to band all the members of a nation together by the chords of a common interest and an active sympathy, but to give to man himself almost the locomotive power of the birds of the air, and to expand his faculties, by bestowing upon him a wider compass of knowledge, and giving him a vastly increased sphere of action. The lever of human power is thus made most indefinitely lengthened, and the capacities of industry are proportionately enlarged. In our comparatively new country, the advantages of this new invention are at least partially seen, and most of the States are putting forth exertions to bring them into speedy action. As before remarked, all participation in these great works is held by the present Administration to be denied to the General Government. To individual and State enterprise alone, then, our country must look for progress in these works of truly national importance. By resigning to the General Government the revenues of commerce, the States have divested themselves of that prolific source



and are reduced to the narrow and stinted taxation upon banks, auction licenses, and a few objects. How cheering, then, would be the prospect among the States, of the proceeds of our rich and unexplored national domain! If wisely managed and equitably divided, the share of Massachusetts alone in the proceeds could hardly be less than half a million of dollars annually, and it might much exceed that sum. An impulse would be given to the present predominance of enterprise in the country, by this obvious disposition of the public lands! Under the influence of such a system, how few years would elapse, before the whole surface of the country would be chequered with roads and canals, and the widely separated portions of our vast Republic be made to shake hands in the daily communication of friends and neighbors. In the commercial, agricultural and social benefits that would flow from such a state of things, how soon and how completely would the threatened evil of dismemberment be removed from the too great extent of our territory, from our political horizon!

It is another consideration too obvious in all its bearings to render any thing more than mere suggestion.

The cause of Education is daily rising in importance in the view of the people of this country, and our legislative committee have instructions to inquire what efforts have been made to secure some portion of the proceeds of the national domain, for this great object. If the true relation to this subject should be adopted, how could it be the means of Massachusetts, as well as of the other States, to do justice to this cause, without anything upon other interests.

How can we turn a moment from considering the incal-

culable benefits which would flow from a just and prudent disposition of these lands, to other and still greater evils than those which have been mentioned, if they remain for a few years longer in their present condition—a gambling fund for political schemers. Heretofore the new states, within whose jurisdictional limits the public lands are respectively situated, seem to have been unaware of the terms and conditions under which they were subjected to the control of Congress. Accordingly when any of these have been desirous of obtaining grants for local purposes, they have been accustomed to approach the National Legislature in the attitude of petitioners, and in the terms of humble solicitation. But as these States have been growing in population and political strength, the tone of their applications has materially changed, and now, some of their political leaders boldly demand as a right, what in former times was meekly craved as a bounty. A western Senator has recently uttered this doctrine of right, on the floor of the Senate, and it is well known that others are ready to second him. The author of the graduation bill, which has just passed the Senate, and is now before the House of Representatives, a few days since, used a threat upon this subject, which may well excite serious reflection. In allusion to the growing strength of the West, and the rapidly advancing period when these western States will have a majority in Congress, he spoke of them as then to have it in their power to write at the head of any bill, "*Statum luntas pro ratione.*" Let our will stand for reason. It is no forced construction to say that he who utters this language asserts, that the time is coming when *might* *shall make right*, upon this great question of our public lands. And it is material to consider that this is spo

g member of the Administration, and of the  
has been long dominant in the country, and by  
himself an aspirant for the presidency of the  
ates.

bold and audacious pretension, the old States  
and never ought to submit "*Fiat, justitia, ruat*  
If a civil war must be the consequence of such  
s encroachments, let it come when it may,—  
ates have yet the power, and we trust the dis-  
also, in one united phalanx, to vindicate their  
We say not this in the spirit of menace, or in  
of the true interests of the west. The Eastern  
dudge no feeling of hostility, no spirit of jealousy,  
and niggardly sentiment of parsimony, towards  
g portion of our country. On the contrary, they  
a national feeling of pride and exultation upon  
erity of their brethren of that broad and beau-  
ty, which stretches between the two great moun-  
s of our northern continent. As evidences of  
al policy which has ever been cherished towards  
rn States, by the East, we can point to the rich  
which have been made to the western States from  
me, and that too when the voice of the West in  
al councils was but as the faint request of in-  
n all these measures of liberality, New England  
an active and efficient part, and Massachusetts  
been ready to lead in whatever could promote  
erity of the western States.

specific act of the Legislature of Massachusetts,  
e of the liberal feeling of this Commonwealth,  
point to the Resolves of February 1822, sanc-  
e various grants of land made by Congress for  
rt of schools in the western States, and refusing

to participate in the call of Maryland, for equivalent grants to the old States. Massachusetts has now a Senator in Congress, who in all the acts of his distinguished public career has kept steadily in view the interests of the great West, and no part of his political life has received more hearty sanction at the hands of his constituents than this; nor is there a tie which binds the sympathy of the people of the eastern States to a distinguished Senator of the West more strongly, than that which arises from his patriotic efforts to deal liberally with the western States in attempting to dispose of the national domain.

We do not believe that our fellow citizens of the West are disposed to repay this liberality of the East by an act of outrageous injustice. We have the utmost confidence in their sense of honor and integrity. But may they not be gradually seduced by designing politicians, constantly tempting them by a boon amounting to hundreds of millions? May not their hopes and expectations be excited, their judgment warped by specious arguments, until at last, when they shall have a majority in the councils of the nation—an event which must soon happen—they will be prepared to sanction a surrender of the whole national domain into their own hands? Should the mantle of the present Chief Magistrate of the United States descend upon the shoulders of the individual already mentioned, who in reference to this very question is now directing the attention of the western States to the time when they will have it in their power to write at the head of any bill in Congress, "*Stat voluntas pro ratione*"—and accordingly, his aspirations shall be fulfilled, and he shall become President of the Union, can any one doubt that the price we shall pay, for a Chief Magistrate, will be the whole public domain, valued at more than a thousand millions.



Should not this prove to be the precise issue, it needs no gift of prophecy to foresee that the lands continue, as they now are, subject to the control of the General Government, a subject to the western States, and above all, an issue by which profligate politicians may attempt to gain the favor of leading portions of the country, and will have a corrupting and agitating influence on the people, and at last be wrested from the States to which they justly belong.

In view of the subject, the necessity of removing the cause by the adoption of some permanent system, this issue of contention, must be obvious to all. It will be stated that such a measure, introduced by Mr. Clay, was frequently sanctioned by resolves of the Legislature of this Commonwealth in February, 1836, was passed by large majorities of both Houses of Congress, but was only thwarted by the most extraordinary exercise of executive power, that has been recorded in the history of a free people.

In obedience to a call of the Senate of the United States, the Secretary of the Treasury has recently furnished a statement, showing the net proceeds of the public lands that would have been received by each of the States if this bill gone into effect. The statement is as follows:

*Exhibit of the proportion of the nett proceeds of the Sale of the Public Lands which each State would have received up to and including the 30th of September 1838, under the bill entitled "An Act to appropriate, for a limited time, the nett proceeds of the sales of the public lands of the United States, and for grant of the lands to certain States;" the expenses incident to the sale of the lands, and the amount of the two, three, and five per cent. funds, accruing to the States under compacts entered into with them on their admission into the Union, being first deducted.*

STATES.	Twelve and a half per cent. on the nett proceeds of sales in each of the States in which the Public Lands are situated.	Total amount of nett proceeds that would have been received by each State.
Ohio, - - - -	\$554,182	\$4,557,
Indiana, - - - -	1,182,404	2,646,
Illinois, - - - -	1,126,724	1,797,
Missouri, - - - -	559,793	1,116,
Alabama, - - - -	845,334	1,965,
Mississippi, - - - -	1,201,198	1,672,
Louisiana, - - - -	248,319	982,
Michigan, - - - -	401,016	443,
Arkansas, - - - -	96,818	134,
Maine, - - - -		1,705,
New Hampshire, - - - -		1,149,
Massachusetts, - - - -		2,605,
Rhode Island, - - - -		414,
Connecticut, - - - -		1,270,
Vermont, - - - -		1,198,
New York, - - - -		8,190,
New Jersey, - - - -		1,365,
Pennsylvania, - - - -		5,754,
Delaware, - - - -		322,
Maryland, - - - -		1,732,
Virginia, - - - -		4,368,
North Carolina, - - - -		2,730,
South Carolina, - - - -		1,942,
Georgia, - - - -		1,834,
Tennessee, - - - -		2,669,
Kentucky, - - - -		2,654,
	<u>\$6,215,788</u>	<u>\$57,227,</u>

Twelve and a half per cent. on the nett proceeds to the States in which the public lands are situated, - - - - 6,215,788  
 Nett proceeds that would have been divided among all the States, - - - - - 51,011,727  
\$57,227,

seem, now too late to recal the fact, that a  
its provisions, salutary in all its tendencies, and  
by the decisive vote of the National Legisla-  
strangled by being kept in the hands of the  
gistrate of the nation, until after the adjourn-  
Congress; and this too without his deigning to  
y reason for a proceeding so novel, and so ille-  
t it ought not to escape notice, that this act of  
usurpation, which defeated a great and benefi-  
eme of policy—which kept a vast amount of  
the treasury but to excite fermentation, and pro-  
l explosion in our financial system—and which  
s our national domain, to the value of more than  
d millions, as a fund for bribing new States into  
e to the dominant party, whatever that may be—  
its advocates and defenders. Evidence more  
e than this, cannot be needed, to prove that this  
onal interest is already connected with sinister  
of the most dangerous tendency.

king at the preceding report of the Secretary of  
d States, it appears, that the share of Massachu-  
e proceeds of the public lands, since the veto of  
ferred to, would have been \$2,605,734. A part  
n has been received, it is true, in the distribution  
plus revenue in 1837, but still, nearly \$1,300,-  
ne proper share of Massachusetts has not been  
and farther, a large annual sum, which would  
secured to Massachusetts by Mr. Clay's bill,  
etained in the grasp of the executive treasury,  
with the millions belonging to other States. As  
f Massachusetts, as citizens of the United  
e might deeply feel the pecuniary wrong that  
done in this case; but this sinks into insignifi-

cance, when we regard the subject in one other point of view. In the first place, this act of the Chief Magistrate was a direct measure to prevent the proceeds of the public lands from passing beyond *his* control; and in the second place,—in a country where the professed political tendencies of all parties are to take back power, which from time to time has unduly accumulated in the hands of the Executive, and restore it to the people,—in such a country, this strong act of the Chief Magistrate, is not merely tolerated but applauded. A fact so striking and this ought not to pass in review before the citizens of this country without exciting serious reflexion. How can it be accounted for, that, in this instance, a great and fundamental principle of civil liberty has been violated and that violation vindicated? Can it be explained but on the supposition that the influence of the Executive is already so great as to hold the people in awe, or that the means of corruption are so extensive, as to lull the jealous spirit of liberty into a state of stupor? However these questions may be answered, it appears manifest that the public domain of the United States ought no longer to be retained in a position to increase the already dangerous power of the executive department of our government. If the people of the United States are unwilling that their money should be squandered, they should at least take care that it is not used to forge fetters for themselves and their posterity.

In whatever aspect, therefore, your Committee is able to regard this subject, whether of justice or policy, it seems to demand the immediate action of the National Legislature, with a view to secure the rights of the States, to promote the best interests of the Union, and to avert impending evils of the most serious magnitude. They therefore respectively report the following resolve



**Commonwealth of Massachusetts.**

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**For One Thousand Eight Hundred and Thirty-Nine.**

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## **R E S O L V E S**

**On to the Public Lands of the United States.**

**Resolved,** By the Senate and House of Representatives in General Court assembled, that the public lands of the United States, whether acquired by conquest, cession, or purchase, are emphatically the property of the United States of the Union, and that they ought therefore to be used to the use and benefit of all the States, in accordance with the provisions of the Constitution, and cannot be directly or indirectly appropriated to the use and benefit of any particular State to the exclusion of the others, without an infraction of the conditions upon which cessions from foreign powers have been expressly made, and a violation of the spirit of the original compact, as well as the principles of justice and sound policy.

**Resolved,** That we deem it the duty of Congress immediately to adopt some permanent and equitable system,

for the gradual disposition of our public lands, but with due regard to the interests of the whole Union, and providing for the distribution of the proceeds of these lands among the States, in obedience to the conditions imposed by the terms of cession, and the obvious demand for equity.

*Resolved, That* we regard the "Graduation Law" which has recently passed the Senate of the United States, and is now pending in the House of Representatives, as injurious both to the eastern and western States from its tendency to bring into market a large amount of public lands at reduced prices, and as being a gross violation of the rights of the old States, by giving a preference in the purchase of these lands to the citizens of the States in which they lie, and that our Senators in Congress be instructed, and our Representatives be requested to use their exertions to prevent the passage of this bill into a law.

*Resolved, That* His Excellency the Governor be requested to transmit a copy of these Resolves to each of the Senators and Representatives of this Commonwealth in Congress; and also to each of the Executives of several States and Territories, with a request that the same may be laid before the Legislatures of those States and Territories, respectively.







.....

.....No. 18.

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# REPORT AND BILL

CONCERNING THE

## E OF ATTORNEY GENERAL.

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**Commonwealth of Massachusetts.**

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SENATE, Jan. 30, 1839.

Special Committee to whom was referred the Report of the Attorney General, have had the matter under consideration, and report the accompany-

...nation of the bill, and the reasons which have recommended, the Committee briefly state, the defects which are suggested by the Attorney General in relation to a provision for the preliminary expenses and investigations in which the Commonwealth may be interested, and for the supervision by the State of the Commonwealth, of proceedings under the bill establishing a Board of Bank Commissioners, and require some further legislation. The difficulties which the public service labors for want of legislation established by the first section of the bill, are such as to need argument. Every citizen is interested in criminal law and public claims should be promptly and thoroughly enforced, and true economy justifies any expense which will tend to insure this result. The expense which the bill puts upon the expenditure of the public fund, will, it is thought, sufficiently secure against any or wasteful application.

Under the law of the last session of the Legislature establishing a Board of Bank Commissioners, it became their duty, under certain circumstances, to institute proceedings against any Bank which has violated the provisions of law; and, during the last year, as it appears from their report, three instances have occurred in which such proceedings have been resorted to. It must be obvious, that legal measures of this important character ought to be conducted under the direction of an officer who is responsible in his official capacity to the Commonwealth. There is however, no law which makes it the duty of the Attorney General, to give any attention or direction to cases of this nature; and it is understood that, in the instances referred to, the Commissioners have been compelled to employ professional assistance at the expense of the State,—and from the character of the proceedings, it cannot be reasonably expected that this expense will be very small. Considerations, both of economy and public policy seem to require, that this duty should no longer exist, but that this class of duties should be hereafter added to those which now properly appertain to the office of the Attorney General. Cases may arise in which a Banking Corporation setting provisions of law and the Commissioners at defiance, may resist judicial process by every art which legal ability and employ can suggest,—and the public ought to have the assurance, that the interests of the Commonwealth are safe in the hands of an officer whom they know,—and over whose conduct the Legislature have a direct supervision and control.

It seems also, to the Committee, that the Treasurer and other public officers, should be at liberty to call on the Attorney, for his advice and assistance in relation

tions that may arise in the course of their offices. The great and increasing interest which the Commonwealth has assumed in connexion with Railroads, may well be supposed to give rise to difficulties, and perhaps, collisions in which lenience will be indispensable. Various occasions have arisen, in which, the Attorney General has sought his aid,—although there is no law which imposes a class of duties upon him ;—and the Committee, therefore, so framed the annexed bill as hereafter to place these subjects within the list of his official obligations.

Thus increasing the duties of this officer, the Committee think, that justice also requires that the salary of the office should be restored to eighteen hundred dollars the sum originally established by the law of 1832. In 1835, in consequence of a supposed diminution of business throughout the State, the salary was reduced to twelve hundred dollars. But it must now be ascertained, that the ordinary business of the office has greatly increased, but the Legislature, by several Acts, has superadded new duties of an important character, and it is now proposed to make still further additions upon his services. The Committee, therefore, recommend the change of salary which is proposed, as reasonable, and recommend it to the consideration of the Legislature.

GEORGE ASHMUN,

*Per order.*





Commonwealth of Massachusetts.

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One Thousand Eight Hundred and Thirty-  
Nine.

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## AN ACT

governing the Office of Attorney General.

*Enacted by the Senate and House of Representatives in  
General Court assembled, and by the authority  
of the people as follows :*

1. His Excellency the Governor, by and with the advice and consent of the Council, is hereby authorized, on the representation of the Attorney General, to draw his warrant on the Treasury for contingent expenses of such civil actions or suits as are or may be instituted for the benefit of the Commonwealth, not exceeding the sum of three hundred dollars in any one year ; for which sum, the Treasurer, in disbursing the same, shall be held annually in the month of October, to account to the Governor

8 OFFICE OF ATTORNEY GENERAL. [Jan

11 and Council, and shall state the amount of the  
12 so expended in his annual report to the Legisla

1 SEC. 2. It shall be the duty of the Attorney  
2 eral, whenever required by the Treasurer and Re  
3 er General of the Commonwealth, the Secretary  
4 jutant General, or Board of Bank Commissione  
5 consult and advise with them respectively, on  
6 questions of law that may arise in the course of  
7 official business, and to take charge of, and co  
8 before the Supreme Judicial Court, or any J  
9 thereof, all processes that shall be instituted by  
10 Bank Commissioners, or any one of them.

1 SEC. 3. The sum of eighteen hundred dolla  
2 hereby established as the annual salary of the A  
3 ney General, payable in equal quarterly payment

1 SEC. 4. This act shall be in force from and  
2 its passage.



.....

.....No. 19.

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**REPORT AND BILL**

**REGULATING THE**

**OF RAIL-ROADS.**

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**Commonwealth of Massachusetts.**

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HOUSE OF REPRESENTATIVES, Jan. 18, 18

*Ordered,* That the Committee on Railways and Canals consider the expediency of making some general provisions by law defining the relative rights and duties of Rail-road Corporations, and regulating the conditions of the inter-change of their business.

L. S. CUSHING, *Clerk*

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SENATE, Jan. 19, 18

Concurred.

CHARLES CALHOUN, *Clerk*

**Commonwealth of Massachusetts.**

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IN SENATE, Feb. 1, 1839.

Standing Committee on Railways and Canals  
was committed an Order of the 18th inst.  
g them to consider "the expediency of making  
general provisions by law, defining the relative  
and duties of Rail-road Corporations, and reg-  
the conditions of the inter-change of their bus-  
having attended to that duty submit the fol-

**R E P O R T:**

subject thus brought under the consideration of  
Committee has been regarded by them as one of very  
importance. The existing connexion between the  
rail-roads within the Commonwealth, is suffi-  
cient to awaken to the subject the most profound atten-  
tion when it is considered that the interests con-  
cerned in these Roads are constantly becoming more  
and more complex, the Committee discover the  
reasons urging to the adoption of some general  
law regulating as far as may be, the inter-  
course between the several Rail-road Corporations,

which by the terms of their several charters, are authorized to connect their roads with those of other corporations. The rail-roads of no less than fourteen different corporations, are authorized by the express terms of their charters, to be united with other rail-roads. In the 12th Section of the act incorporating the Boston and Lowell Rail-road Corporation, is the following provision—"provided that the State may authorize any company to enter with another rail-road at any point of said Boston and Lowell Rail-road, paying for the right to use the same, or any part thereof, such a rate of toll as the Legislature may from time to time prescribe, and *complying with such rules and regulations as may be established by said Boston and Lowell Rail-road Corporation, by virtue of the fifth section of this act.*"

The power of adopting rules and regulations given by the fifth section of said act, is as follows: "The transportation of persons and property, the construction of wheels, the form of cars and carriages, the weight of loads, *and all other matters and things in relation to the use of said road, shall be in conformity to such rules, regulations, and provisions, as the directors shall from time to time prescribe and direct.*"

By the first section of the act incorporating the Charlestown Branch Rail-road Corporation, the Company is authorized to locate and construct a rail-road from Swett's Wharf in Charlestown, in certain directions, "to a point on the Boston and Lowell Rail-road, near the 'one mile post,' so called." By the sixth section of this act, the said Charlestown Branch Rail-road Corporation, is "authorized to enter with their said branch rail-road, on that part of the Boston and Lowell Rail-road designated in the first section of this act, and use the



part thereof, paying therefor such a rate of  
Legislature may from time to time prescribe;  
*with such rules and regulations as may be es-*  
*by the Boston and Lowell Rail-road Corpora-*  
*ture of the fifth section of their act of incorpo-*

first section of the act incorporating the Ando-  
Haverhill Rail-road Corporation, the company  
ized "to locate, construct, and finally complete"  
from a certain point in the town of Andover,  
Boston and Lowell Rail-road, in the town of  
on, in the county of Middlesex, so as to form a  
ereof." By subsequent acts, the Andover and  
Rail-road Corporation is authorized to extend  
to the line of the State of New Hampshire.

13th section of the act incorporating the Ando-  
Haverhill Rail-road Corporation, the company is  
ized to enter with their rail-road on such part  
oston and Lowell Rail-road, as shall be deemed  
edient, paying for the right to use the same or  
thereof, such a rate of toll as the Legislature  
n time to time prescribe, complying with such  
*regulations as may be established by the Boston*  
*Lowell Rail-road Corporation by virtue of the fifth*  
*of their act of incorporation."*

first section of the act incorporating the Nashua  
rell Rail-road Corporation, authorizes the loca-  
construction of a rail-road, "from Lowell in  
ty of Middlesex to form a junction with that  
the Nashua and Lowell Rail-road lying within  
of New Hampshire."

third section of the act contains the following pro-  
"That said corporation is authorized to enter

with its rail-road on that point of the Boston and Lowell Rail-road designated in the first section of this act, or within thirty rods in either direction from said point, paying for the right to use the same or any part thereof, such a rate of toll as the Legislature may from time to time prescribe, and complying with such *rules and regulations as may be established by said Boston and Lowell Rail-road Corporation, by virtue of the fifth section of their act of incorporation.*"

The 12th section of the act incorporating the Boston and Providence Rail-road Corporation, contains the following provision : *provided*, the State may authorize any company to enter with another rail-road at any point of the Boston and Providence Rail-road, paying for the right to use the same or any part thereof, such a rate of toll as the Legislature may from time to time prescribe, *and complying with such rules and regulations as may be established by said Boston and Providence Rail-road Corporation, by virtue of the fifth section of this act.*"

The provision in the fifth section of said act, above referred to, is the following : "The transportation of persons and property, the construction of wheels, the forms of cars and carriages, the weight of loads, *and all other matters and things in relation to the use of said road, shall be in conformity to such rules and regulations and provisions as the directors from time to time shall prescribe and direct.*"

The first section of the act incorporating the Taunton Branch Rail-road Corporation, authorizes the construction of a rail-road "from Taunton in the county of Bristol to Mansfield in said county, and at Mansfield to form a junction with the Boston and Providence Rail-road."

The twelfth section of the same act contains the fol-

**vision :** “The Taunton Branch Rail-road Corporation is authorized to enter with its rail-road at the points of the Boston and Providence Rail-road designated in the first section of this act, paying for the use of the same or any part thereof, such a rate of toll as the Legislature may from time to time prescribe, *complying with such rules and regulations, as the Boston and Providence Rail-road Corporation may be established by the virtue of the fifth section of their act of incorporation.*”

The first section of the Act incorporating the Seekonk Rail-road Company, authorizes the location and construction of a rail-road, from “a point at or near Old Point, so called, on the Seekonk river, in Seekonk, running northeasterly across Rocky Point, to some point on the Boston and Providence Rail-road, terminating at the rail-road bridge, a distance of two thousand feet.” By the fifth section of their act of incorporation is “authorized to enter with its said rail-road, on that part of the Boston and Providence Rail-road, designated in the first section of this act, for the use of the same or any part thereof, paying therefor a rate of toll as the Legislature may from time to time prescribe, *complying with such rules and regulations, as may be established by the Boston and Providence Rail-road Corporation, by virtue of the fifth section of their act of incorporation.*”

The first section of an act in addition to “an Act to incorporate the Fall River Mill Road Rail-road and Company,” it is provided that said company is “authorized to enter with its rail-road upon the Boston and Providence Rail-road at or near India Point Bridge in the town of Seekonk, as is provided in the twelfth section



of the act establishing the Boston and Providence Rail-road Corporation, paying a reasonable compensation therefor."

The act incorporating the Old Colony Rail-road Company, authorizes said Company "to locate, construct, and finally complete a rail-road from the town of Taunton to the town of New Bedford, commencing at the south-western termination of the Taunton Branch Rail-road."

By the fourteenth section of the act incorporating the Boston and Worcester Rail-road Corporation, it is provided "that the Legislature may authorize any company to enter with another rail-road at any point of said Boston and Worcester Rail-road, paying for the right of using the same or any part thereof, such a rate of toll as the Legislature may from time to time prescribe, *complying with such rules and regulations as may be established by said Boston and Worcester Rail-road Corporation by virtue of the fifth section of this act.*"

The provision in the fifth section of said act, above referred to, is the following. "The transportation of persons and property, the construction of wheels, the form of cars and carriages, the weight of loads, *and all other matters and things in relation to the use of said rail-road shall be in conformity to such rules, regulations and provisions, as the directors shall from time to time prescribe and direct.*"

In the fourteenth section of the act incorporating the Norwich and Worcester Rail-road Corporation, it is provided that said corporation is "authorized to enter upon and unite its rail-road with the Boston and Worcester Rail-road at any point therein, in the towns of Worcester and Millbury, upon the terms, and agreeable to the provisions contained in an act to establish the Boston and Worcester Rail-road Corporation."



first section of the act incorporating the West-  
 ad Corporation, the company is authorized  
 to construct, and complete a rail-road from the  
 termination of the Boston and Worcester Rail-  
 road to the Connecticut river, and across said river to the  
 southern boundary of the State."

second section of the act establishing the West-  
 Stockbridge Rail-road Corporation, the company is au-  
 thorized to construct a Rail-road from the west line of  
 the town of West Stockbridge, to the village  
 of West Stockbridge. By the fifth section of the same  
 company is required "to permit the Western  
 Rail-road Corporation to unite its road or any branch  
 with, and to enter upon, the same in any part  
 and to use the same, paying such a rate of toll  
 as the Legislature shall prescribe, and comply  
 with such regulations and rules as the directors of  
 the West Stockbridge Rail-road Corporation may from  
 time to time prescribe."

second section of the act incorporating the  
 West Stockbridge Rail-road Company, it is authorized to con-  
 struct a rail-road from the southern boundary of the State  
 in the town of Sheffield, "to a convenient point at or  
 near the village of West Stockbridge, for its intersection  
 with the West Stockbridge Rail-road or the Western  
 Rail-road,"

As may be seen by the foregoing extracts from the sev-  
 eral charters, that most of the rail-road corpora-  
 tions referred to, are not only authorized to unite  
 their roads with other roads, but that their charters clearly  
 contemplate a use by them of the roads with which they  
 are authorized to unite. But it is equally clear that the  
 rail-road by a different corporation, than its  
 parent, is not an unlimited one, but is subject to impor-

tant restrictions. In every instance where one rail corporation is permitted to use the road of another expressly required of the corporation using it, that it comply with *all the rules and regulations adopted by the directors of such road*, as well as the payment for use of such a toll as the Legislature may prescribe. In what extent any rail-road corporation, by the adoption of rules and regulations is permitted to restrict the use of a road by another corporation, is a question of no small importance. By a reference to the foregoing extracts from the charters of the Boston and Lowell, Boston and Providence, and the Boston and Worcester Rail-road Corporations, it would seem that this power of regulation is clearly defined, and that their power is by no means limited to the particulars specified in the extracts referred to. The particulars which are subject to this regulation are "*the transportation of persons and property, the construction of wheels, the form of cars and carriages, and the weight of loads.*" That any rail-road corporation existing under the charters could use the rail-road of any other corporation without complying with the regulations of the directors relative to the particulars specified will be pretended by any one. But instead of limiting the power of regulation by the directors to these particulars, the charters expressly extend it "*to all other matters and things in relation to the use of said roads.*" A question of great practical importance is presented to the consideration of the Legislature, whether in the adoption of "rules and regulations" as to "*all matters and things in relation to the use of their roads,*" other than the particulars above specified, the directors have power to exclude from their roads the locomotive engines of all other corporations, provided they furnish to such other corpo-

at motive power to draw their cars over their  
as reasonable times and as safely and expedi-  
the nature of the case will admit.

Upon this point the Committee can entertain no  
If the terms of the several charters conferring  
er to adopt rules and regulations as "to all other  
and things in relation to the use of their road"  
unmeaning terms, it would seem, that they are  
ly broad and extensive in their signification to  
he power in question. For what purpose we  
ask was such a general clause inserted after spe-  
he particulars above enumerated if it was not in-  
to embrace other particulars than those which are  
ly enumerated? At the time the acts under  
ation were passed, no rail-roads had been con-  
in this Commonwealth, and the manner in which  
ere to be used, or the precise character of the  
ons which it would be found necessary to adopt,  
t then be foreseen. Accordingly such particulars  
supposed to be the proper subjects of regulation  
irectors were enumerated—but at the same time  
the most cautious manner to guard against the  
on of this power of the directors to the particulars  
, language the most extensive in its signification  
yed, so as to extend this power to such other  
ers as might be found to be important in the prac-  
eration of the system. What more important  
on could be adopted "in relation to the use of a  
," than the preservation of life and property by  
g the number of locomotive engines which are  
er the same road, and by subjecting those which  
ssary to the control of the same board of direc-  
ecially upon a road with a single track.



The Committee, therefore, are clearly of opinion, that the right of one rail-road corporation to use the road of another, being a limited one, and one that is to be enjoyed only by complying with *such rules and regulations in relation to the use of the road, as its directors may adopt*, a regulation that the motive power shall be furnished and managed only by the owners of each road is no infringement of the charter of the owners of other roads.

Besides, it will be apparent from a slight examination of the different roads already built and authorized to be built, connecting themselves with other roads that every other plan is utterly impracticable.

If the principle is admitted, that one corporation whose road is connected with another, is to be permitted to run its separate trains and locomotives over such other road, the same principle must be applied to all.

If it be supposed that the Boston and Lowell Rail-road Corporation should run over its road two daily passenger trains each way, and an equal number of merchandise trains, and if the same privilege is granted to the Charlestown Branch, the Andover and Haverhill, and Nashua and Lowell Rail-road Corporations, no less than thirty-two different trains drawn by separate locomotive engines, must pass daily over the Boston and Lowell Rail-road.

Let the same principle be applied to the Boston and Providence Rail-road, and a similar result will be produced. If two daily passenger trains and an equal number of merchandise trains are drawn by the Boston and Providence Corporation each way over their road, and the same privilege is extended to the Taunton Branch, the Old Colony, the New Bedford and Fall River, the Seekonk Branch, and the Fall River Mill Road, Rail-road and Ferry Corporation, no less than forty-eight different

own by separate locomotives, must pass daily Boston and Providence Rail-road.

Let the same principle be applied to the Boston Worcester road, to be used in a similar manner by Boston and Worcester, Norwich and Worcester, the Boston and West Stockbridge, and the Berkshire Corridor, and forty different trains must pass daily on the Boston and Worcester road; and if the connecting roads from Worcester to Nashua, from Hartford to Springfield, and from Adams to Pittsfield, should be completed, and the same privilege extended to them, the number of daily trains must be increased over the Boston and Worcester road, must be increased to sixty-four, and all the roads must be a rail-road with a single track. The impracticability of the plan which we are considering is apparently from the great number of trains which are to pass over the main roads extending from the city of Boston, that these numerous trains are to be subject to the control and management of at least eighteen boards of directors, and if the proposed roads should be completed, applications for two of which are now before the Legislature, the number of boards of directors, must be increased to twenty-one. It should be stated, that all the rail-roads to which we have referred are now in operation. But all their charters are issued under them the several corporations have full power to construct them, and connect their roads with each other in the manner which we have stated, and if these corporations shall find it for their interest to construct their roads they will undoubtedly avail themselves of the privileges conferred by their respective charters. It may be said, that all the different corporations

would not desire to avail themselves of the privilege of running their own locomotives over other roads even if that privilege should be granted to them. But to determine of course the future interests or wishes of different corporations may urge them cannot now be known.

It may also be said, that the Legislature would exercise a proper discrimination and would permit only such corporations to avail themselves of this privilege as could enjoy it consistently with the public interest, and would also limit the number of corporations who are to enjoy this privilege as to prevent any unreasonable hazard to persons and property which might be transported over the different rail-roads. But should any such attempt be made, the claims of the different corporations to the enjoyment of this privilege might be so nearly equal that it would be very difficult to grant it to one and withhold it from the other.

From this view of the matter, the Committee are unanimously of opinion, that some general provisions of law to which all the different corporations shall be subject are imperiously required.

In presenting the accompanying bill, the Committee propose to prohibit the use of locomotive engines or other motive power on any rail-road except under the immediate direction of the owners of such road. And at the same time in order to secure the rights and interests of such corporations as are or may hereafter be authorized to unite their roads with others, they require the owners of every road, if desired, to draw over their the passenger and merchandise trains of such other corporations, at all reasonable times, and for a reasonable compensation. And in case the parties cannot agree upon the terms of compensation to be paid for drawing

the other corporations over their road and upon  
at which such trains are to be drawn, the bill  
or the appointment by the Governor, with the  
Council, of three commissioners by whom the  
matter of disagreement shall be equitably ad-

committee, therefore recommend the passage of  
accompanying bill.

All which is respectfully submitted,

By order of the Committee,

LINUS CHILD, *Chairman.*







**Commonwealth of Massachusetts.**

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Year One Thousand Eight Hundred and Thirty-Nine.

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**AN ACT**

Regulating the use of Rail-roads.

*enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the people, as follows :*

1. No locomotive engine or other motive power shall be allowed to run upon any rail-road constructed by authority of this Commonwealth, except so far as may belong to the corporation owning the road, unless by the consent and approbation of the said corporation.

2. Every rail-road corporation which may be the owner of any rail-road in use, is hereby required to give reasonable times and for a reasonable compensation to the owners of any other rail-road corporation which

6 has been or may hereafter be authorized by the Legislature to enter with their rail-road upon or to unite the same with the road of such corporation.

1 SEC. 3. The Governor with the advice and consent of council shall as soon as may be after the passing of this act, appoint three persons to be styled Rail-road Commissioners, who shall exercise the powers and perform the duties hereinafter specified for the term of five years and until their successors are appointed, provided however, that the Governor, with the advice of Council, may remove from office any or all of said commissioners and fill all vacancies.

1 SEC. 4. Whenever any rail-road corporations whose roads enter upon and unite with each other, cannot agree upon the compensation or rate of toll to be paid to any corporation for drawing the cars of any other over their road, as is required in the second section of this act, or upon the times at which said cars are to be drawn, either party may apply in writing to said commissioners, setting forth the fact of such disagreement, and requesting them to adjust the same, whereupon said commissioners shall appoint a suitable time and place of hearing, and shall give notice in writing of such appointment to the parties fourteen days at least before the time appointed, and after hearing said parties, the commissioners, or a major part of them, shall determine upon principles which shall be just and equitable between the respective parties, the rate of compensation to be paid as aforesaid, and the times at which it shall be payable, and shall also determine the stated periods, not exceeding twice a day in each direction, at which said cars are to be drawn as aforesaid, and such determin-

when made in writing and delivered to the parties, shall be binding upon them, and shall so continue until the terms thereof are varied by the agreement of the parties or by said commissioners upon a written application thereof, as is hereinafter provided, and in fixing the periods at which such cars are to be drawn thereon, said commissioners shall take into consideration the convenience and interest of said railroad and of the public who will be accommodated thereby.

5. Said commissioners shall revise any decision which they may have made under the authority of this act upon the application in writing of either party, the commissioners having first given to the applicant the same notice and hearing as is provided in the preceding section, and may modify or vary the terms of any previous decision, as they may deem just and equitable, and any determination upon such application for revision, when made in writing and delivered to the parties, shall be binding upon them, and shall so continue unless altered by the agreement of the parties or varied by a subsequent decision of said commissioners, *provided however*, that no application shall be made to said commissioners to revise any previous decision within one year after such decision shall have been made.

6. Whenever any decision shall have been made by said commissioners, the corporations between which such decision was made, shall append a copy of the same to their next annual report to the Legislature, and shall in their annual reports of their receipts and expenditures specify their receipts and expenditures under such decisions of said commissioners, and

8 any income arising under such decisions, shall be  
9 ject to the provisions of law in regard to the m  
10 the Commonwealth to reduce the tolls on their  
11 or to purchase said roads in the same manner  
12 income arising from the use of said roads is  
13 subject.

1 SEC. 7. Said commissioners for their service  
2 der this act, shall be allowed as compensation  
3 rate                      dollars for every day occupied  
4 the duties of their office, and                      c  
5 mile for travel, reckoning from their place of  
6 dence to the place of hearing, said compensation  
7 be paid by the parties in equal proportions.



## SENATE.....No. 20.

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Commonwealth of Massachusetts.

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SENATE, Jan. 22, 1839.

, That the Committee on the Judiciary, con-  
further provisions of law are necessary in re-  
the punishment of persons, who may break and  
e night time, any office, shop, or warehouse ad-  
a dwelling-house, with the intent to commit a  
d whether any alterations or amendments of  
concerning appeals, are required in cases arising  
9th section of the 126th chapter of the Re-  
tes.

Attest,

CHARLES CALHOUN, *Clerk.*

**Commonwealth of Massachusetts.**

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In the Year One Thousand Eight Hundred and Thirty-Nine.

---

**AN ACT**

For the Punishment of Shop-breaking in certain cases.

**BE** *it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :*

1 Every person, who shall break and enter, in the  
2 night time, any office, shop, or warehouse, adjoining  
3 to, or occupied with a dwelling-house, with intent to  
4 commit the crime of murder, rape, robbery, larceny,  
5 or any other felony, shall be punished by imprison-  
6 ment in the state prison, not more than twenty years.

Commonwealth of Massachusetts.

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One Thousand Eight Hundred and Thirty-  
Nine.

---

## AN ACT

Appeals of Persons Adjudged to be Common  
and Notorious Thieves.

*enacted by the Senate and House of Represen-  
General Court assembled, and by the authority  
e, as follows :*

Any person, who shall be convicted upon indictment at the same term of any court of common law or of the municipal court of the city of Boston, as principal, or as accessory before the fact, in or more distinct larcenies, and shall thereupon, be found and adjudged to be a common and notorious thief, and shall be sentenced upon such conviction and adjudication, to imprisonment in the state or any house of correction, for a term exceed-

#### 4 PUNISHMENT OF THIEVES, &c. [Jan

10 ing five years, may appeal from such sentence  
11 next supreme judicial court, to be holden in,  
12 the same county, in the same manner, and up  
13 same conditions, and such proceedings shall the  
14 be had, as are set forth in the fifth section of t  
15 hundred and thirty-eighth chapter of the R  
16 Statutes, and on such appeal, each indictmen  
17 severally stand for trial in said supreme judicial  
18 and no appeal shall be allowed from such conv  
19 and adjudication, if the sentence thereon be  
20 term of imprisonment less than five years, any  
21 the contrary notwithstanding.



TE.....

.....No. 21.

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**ELIMINARY REPORT**

**OF THE**

**COMMISSIONERS**

**ON**

**CRIMINAL LAW.**

---



## M E S S A G E.

*ate, and  
use of Representatives :*

nit to the Legislature, a letter from the chair-  
e Commissioners appointed in virtue of a re-  
he 10th of March, 1837, "to reduce so much  
ommon Law of Massachusetts, as relates to  
d punishments, and the incidents thereof to a  
d systematic code," accompanied with a pre-  
report of the Commissioners, setting forth the  
and method pursued by them in executing  
ortant trust, and presenting a specimen of the

to the length of this report, it is transmitted  
iginal to the Senate, with the respectful re-  
t it may be communicated to the other branch  
islatre.

EDWARD EVERETT.

hamber, 4th Feb. 1839.

BOSTON, *February 1, 183*

*To His Excellency,* EDWARD EVERETT,

SIR :—I herewith transmit to your Excellency Preliminary Report of the Commissioners for reducing so much of the Common Law as relates to crimes and punishments, and the incidents thereof, to a written systematic code.

In behalf of the Commissioners,

I am, very respectfully,

Your obedient servant,

WILLARD PHILLIPS

*Senate and House of Representatives of the Commonwealth of Massachusetts, in General Court assembled :*

Commissioners, appointed "to reduce so much of common law of Massachusetts, as relates to and punishments, and the incidents thereof, written and systematic code," submit the following preliminary

## R E P O R T :

Commissioners applied themselves to the work and to them, early after their appointment, and continued to devote themselves to it as assiduously as they have found it practicable to do ; and recently have been able to bestow upon it more of their attention, and to execute it more effectively, than in the early stages of their labors. They deemed a preliminary examination of the common law, generally, to be absolutely essential to the formation of a plan which should meet the views of the Legislature. In this part, they found their labors more arduous, and felt the responsibility to be the more pressing, among the codes and systems of criminal law which have been published, they did not find any one that was satisfactory to them, as a model, or that seemed to correspond to the intentions of the legislature,

or that was sufficiently well adapted to the condition of our jurisprudence and the habits of our community. The precise form they have adopted, they will explain more particularly in a subsequent part of this report. When they had substantially agreed on the form to be adopted for the code, and proceeded to construct it, of it, many subordinate questions arose, which required much discussion and consideration, and which must be settled as they arose, since otherwise the different members could not work in concert, and the results of their labors would not be of a homogeneous character. Besides the difficulties and the labor of the work itself, the legislature will readily suppose, that the commissioners found other hindrances to their progress in their private duties and engagements and circumstances, which it was quite out of their power to avoid. And though it is not comparably more material what shall be reported, whether it shall be reported at a little earlier or later period, still the commissioners consider themselves to be pledged to keep the important work entrusted to them constantly in view, and to use their utmost endeavors to bring it to a completion, as rapidly as possible, in view of the great labor and difficulties it involves, and the inevitable interruptions and delays, which cannot be avoided as far as will permit.

It will be apparent that the work is of a nature, which does not admit of the completion of any part, until the whole ground has been explored, and, at least, the materials collected and arranged for every other ; since no part must be framed in reference, and be adapted to the others. The code will consist of, first, the provisions relating to crimes and punishments generally ; secondly, the definition and description of particular crimes.



air punishment ; thirdly, procedure ; fourthly, laws, and fifthly, evidence. The part, naturally in order in the execution of the work, is the defined description of crimes ; in digesting and preparing different titles of which, however, it is also requisite to select and arrange the materials for the other parts of the code relating to these same titles, since the materials for the different parts of the code, in relation to particular subjects, are more or less connected and put together in the books. The more important, simple, and difficult titles have been first undertaken, such as treason, homicide, burglary, robbery, perjury, libel and arson, most of which have been written out, and much progress has been made with others.

From these titles, it will be seen, on reference to the code, that they occupy a proportionally great space in the body of the criminal law ; and, in preparing these, the commissioners have incidentally done much towards the completion of the whole. Still, until the whole ground has been gone over, it is not possible to estimate what proportional part of the labor has been accomplished ; nor even to say, until, by comparison of opinions and deliberate discussion, by the whole board, upon each proposition, respectively, in some of the articles, it shall appear that great will probably be the labor of finishing the different parts, and putting them in a state, in which the commissioners shall deem them worthy to be submitted to the legislature. For these reasons, they cannot, at present, fix upon a time when the code may probably be completed.

The object of the present report is, to submit a specification of the plan, and to state what the commissioners

understand to be the leading objects in view in providing for the proposed work. And, in so doing, they will necessarily at the same time state the leading principles upon which they are proceeding in its execution, that the legislature may thus have the means of forming an opinion of the proposed plan of the work; and of correcting any misapprehension, into which the commissioners may have fallen; and may give them any further instructions respecting it, that may be deemed expedient.

The resolve, under which the commission is constituted, directs the commissioners "to reduce so much of the common law of Massachusetts, as relates to crimes and punishments and the incidents thereof, to a written and systematic code, specifying separately such alterations and amendments therein as they may deem expedient."

By the description "common law," the commissioners understand to be intended the unwritten law, in the broadest sense of the expression, as distinguished from written or statute law. To ascertain, then, how much of the entire law of crimes and punishments is to be reduced to a code, it is necessary, first, to ascertain to what extent each title of the criminal law has been covered by the statutes. And, in doing this, the revised statutes afford very great assistance; since if the statute law had remained in the state in which it was before its revision, in 1836, the first step for the commissioners would have been the laborious process of collecting, digesting, and arranging the scattered provisions of the statutes, and embodying them in a form like that in which they are now presented.

On examining the statutes, it will readily appear that



in provisions respecting the greater part of cases known to our jurisprudence, but not all of them. For, there are some classes of offences now punished in this commonwealth, which are nowhere mentioned in the statutes. And, in relation to those which are so introduced, the provisions are much more particular in respect to some than in respect to others. If we suppose the whole law, then, statute as well as common law, to be represented by a chart, similar to the nautical charts often met with, the statute law occupies one side, and the common law the other, we shall see some break in the statutory part, where a particular offence is wholly omitted, as, for instance, forgery; and, in others, we should see chasms, where some particular species or variety of a class is omitted; and the statutory portion would in some cases extend a very little breadth, and, in others, a much wider breadth, in comparison with the common law. That the two would be divided by a very irregular boundary.

And, in some cases, the statutory provisions are extremely concise; and though they may cover the whole breadth of the offence, as known to the unwritten law, or be so worded as to exclude any wider extension of the offence beyond the provisions of the statute, yet they are so general in their terms, as in fact to leave every thing within their limits to be settled by the unwritten law. Thus, when the statute law forbids a person to do a certain act, "it is necessary to resort to the common law to ascertain the meaning of the prohibition. And where an act is forbidden, if done "feloniously," we cannot distinctly say what act is thus prohibited, until we

ascertain from the common law the meaning of the  
“feloniously.”

We resort to the common law, then, for two purposes; the one to find prohibitions and rules independent of the statutes, the other to find definitions, expositions, and illustrations of the language and provisions of the statutes. The unwritten law thus consists of portions that are quite distinguishable from the other in this respect, and the distinction needs to be borne in mind in discussions and theories respecting written and unwritten law; for, the question, whether it is expedient that the written law should define a particular crime and assign its punishment at all, or whether it to the unwritten law, and the other question, how particular and precise the definition should be, are very different, and the reasons for or against, in regard to one, do not apply in the same way, and with the same force, in respect to the other. This distinction is the more particularly noticed, as it has a bearing in relation to the proposed plan of the code.

The question then arises, of what does the common law of this commonwealth consist? And the answer will present a cogent argument in favor of reducing it to a written law, and give some idea of the labor and difficulties attending the undertaking.

The constitution\* provides, that “all the laws now in force have been adopted, used, and approved in the province of the colony, or state of Massachusetts Bay, and which have been practised on in the courts of law, shall still remain in force, until altered or repealed by the legislature; such parts only excepted, as are repugnant to the constitution.”

\* Chap. 6th, art. 6th.

s and liberties contained in this constitution." en were the laws, which had been theretofore used, approved, and practised on in the courts

As far as the English law is concerned, it has been held by the supreme court,\* that the early emigrants to this country brought with them "the common law of their native country, as it was amended and altered by the English statutes in force at the time of their emigration," "except such parts as were judged to be unsuitable to their new state and condition."

As very many of the English acts of parliament relating to crimes and punishments were amendments of the common law, the result is that the mass of the written and unwritten criminal law of England is preserved in the above article of the constitution, adopted in Massachusetts, except those parts which were inapplicable to the condition of the country, and those which have been superseded by our own legislation or were inconsistent with the constitution. To ascertain, then, what the written law of crimes and punishments is, we must ascertain what was the written and unwritten criminal law of England, in the early part of the seventeenth century.

And, to do this, we must resort to English legal authorities down to the present time, as there has been no any legislative declaration, or any publication by the commonwealth, distinguishing through all the parts of the English criminal law what part of it is applicable in this state.

Although the statute laws of England down to the

*Commonwealth v. Knowlton*, 2 Mass. Reports, 534; *Commonwealth v. others*, 1 Mass. Reports, 61; *Sacket v. Sacket*, 8 Pickering's Rep. of the Commissioners on the practicability and expediency of the common law, 1836.



period of emigration, in amendment of the common law of crimes and punishments, as far as they were applicable and have not been superseded by the constitution or by legislation, are thus considered to be a part of the unwritten law of the state, yet those statutes have, on the whole, occupied but little space in jurisprudence, as far as relates to the description of crimes and designation of punishments, having, in these respects, been mostly superseded; still it cannot be said with confidence, that no such part of the criminal law of this commonwealth does not now, through the provision of the constitution cited above, depend directly and solely upon some act of parliament, which has been repealed in England more than two centuries because it is not easy to say, what law might or might not be adjudged to be applicable to the condition of this country. A forfeiture of land on account of waste has been adjudged,\* was liable to be incurred on an English statute, dating more than four centuries before and which was not known to have been, previously actually adopted and acted upon in our jurisprudence. It is presumed, however, that in stating the existing unwritten criminal law of this commonwealth, it is not requisite to explore the obscure recesses of the English statutes at large, previous to the seventeenth century to find what odd sections and shreds of them have been superseded or are not applicable; but that they may be passed by, except in cases, where the common law manuals and digests may point them out as subjects for consideration. And if there is danger of any obsolete or unknown law, not mentioned in them, springing up from

\* *Sacket v. Sacket*, 8 Pickering's Reports, 59.

of antiquity, the better way would seem to provide against it by a legislative act, abrogating laws, when not supported by actual adoption in prudence or by other authority.

Accordingly, as far as the English law is concerned, the principal labor in the work in hand is to produce a distinct form so much of the unwritten part of it, as so part of the common law of Massachusetts. In inquiry necessarily arises, what constitutes the law of England. Sir William Blackstone says,\* "the unwritten law of England" "includes not only customs or the common law so called, but also particular customs of certain parts of the kingdom, likewise those particular laws, that are by custom used only in certain courts and jurisdictions." And he adds: "The monuments and evidences of our customs are contained in the records of the severals of justice, in books of reports and judicial decisions, and in the treatises of learned sages of the nation, preserved and handed down to us from the highest antiquity. These maxims and customs are of higher antiquity than memory or history can reach." And he cites Sir Mathew Hale's remark, "The original of the common law, is as undiscovered as the head of the Nile."† As to the evidence by which this law is to be shown and identified, he says,‡ "The only method of proving that this or that maxim is of the common law is by showing that it hath been the custom to observe it." But this doctrine taken literally, would evidently be quite imprac-

mentaries, vol. i. p. 63, 67.

† History of Common Law, 55.

‡ 1 Com. 67.



licable ; and he accordingly proceeds to explain it and says, " A material question arises ; how are these customs and maxims to be known, and by whom is their validity to be determined ? The answer is, by the judges. They are the depositories of the law, the living oracles, who must decide all cases of doubt, and who are bound by their oath to decide according to the law of the land."

The result of this view of the common law is, that the decision by a competent tribunal is proof that the point decided has been a part of the common law from an antiquity " higher than memory or history can reach." And this is the reason of another doctrine laid down by the same author,\* namely : " It is an established rule to abide by former precedents, where the same points come again in litigation." Yet he adds, " this rule admits of an exception, where the former determination is most evidently contrary to reason, much more if it be clearly contrary to the divine law. But yet, the subsequent judges do not pretend to make a new law, but to vindicate the old one from misrepresentation. For if it be found that the former decision be manifestly absurd or unjust, it is declared, not that such a sentence was bad law, but that it was *not* law. That is, that it was not the established custom of the realm as has been erroneously determined." He however adds, that nothing once established as law should be overruled, unless it be " flatly contradictory to reason." But Mr. Christian, the learned and able commentator upon Blackstone, says,† that precedents, when once clearly established, must be followed, though they are

\* 1 Com. vol. i. p. 69.

† Commentaries, vol. i. p. 70.

‡ Blk. Com. vol. i. p. 70, note.

contradictory to reason," and gives an example which fully bears him out. For as jurisprudence rests on precedent merely, the court cannot overrule one precedent established by competent authority, except on the ground of another precedent of a still higher authority. Accordingly, a distinguished writer of our country says,\* "that a solemn decision upon a point of law becomes an authority, and the judges are bound to follow that decision, *"unless it can be shown that the law was misunderstood or misapplied."* And that even when the law is sometimes misunderstood or misapplied, he adds by the fact, that about one thousand cases in English and American books have been overruled, doubted, or limited in their application; and it is apprehended, that the number very much exceeds the estimate.†

These are the foundations of the unwritten law, and the principles of decision, from which it evidently follows that in its nature and essential character it resists change. It is indeed one of its excellencies that it does not, for if facility of change were admitted, there would cease to be any law of this description, and discretion and caprice would be substituted in its place. It shows the importance and necessity of occasional legislative interference, since the affairs of the world are subject to change,—and, unless the laws can be changed accordingly, they become inconvenient and oppressive:—and this is, to say the least, not less the case with regard to crimes and punishments, than in regard to many other subjects of jurisprudence.

\* Com. vol. i. p. 477.

† Report of the Commissioners on the practicability and expediency of modifying the common law, 1836.



So true is this, that even the common law, notwithstanding the rigid and permanent character with which it should seem to be invested, by its very constitution and fundamental principles, is yet acknowledged to have yielded, in some degree, to the imperious exigencies of society. Thus, Sir William Blackstone says,\* “Traditional laws being accommodated to the exigencies of times, suffer by degrees insensible variations in practice, so that though upon comparison, we plainly discern the alteration of the law from what it was five hundred years ago, yet it is impossible to define the precise period, in which that alteration accrued any more than we can discern the changes of the bed of a river, which varies its shores by continual decreases and alluvions.”

This language is not literally consistent with the above quoted from the same distinguished author. But the expressions there used were undoubtedly too strong for the history of jurisprudence shows, what no one indeed would think of doubting, that some customs and doctrines, which may have been very convenient, reasonable, and expedient five centuries ago, being adapted to the state of things at that time, have, in consequence of the changes that have taken place in the mean time become, in reference to the present condition of society, “flatly contradictory to reason,” and “manifestly absurd.” In such cases, if a rule of law, the reasons and grounds of which have thus become obsolete, is so definitely and authoritatively settled by precedent, that the courts are absolutely bound by it, (as in the case mentioned by Mr. Christian, of the rule of the common law, that every legislative act becomes obligatory from

\* Commentaries, vol. iv. p. 409.



ay of the session, unless it expressly provides , and is thus in effect an *ex post facto* law,) only remedy is by legislative interference.

commissioners would not be understood as in disparagement of the common law, which is with sound maxims and principles, and is in particularly characterized by its jealous vindication of personal liberty. But all systems of law and equity and social institutions, however excellent, have their untoward biases and tendencies,—and the common law is not exempt from these ; and they ought to be understood, since an examination of the principle and characteristic operation of a system is the first step in making a fair exposition of the system itself, as well as in pointing out its errors and perfections.

Fundamental principles and binding authority of the common law are generally accepted as laid down by the authors above cited, and so they are understood by the commissioners to have been stated by the former commission, in 1836, in their report to the legislature on the subject of the practicability and expediency of retaining the common law. It ought to be mentioned, however, that a different view has been entertained by some on this subject. A respectable writer on the history of the common law\* lays down the doctrine, that the force of a collection of customs and maxims, which derive their binding power and the force of laws from immemorial usage, coupled with the express consent of the legislature." Others express the same doctrine in a different form, by saying that customs and maxims derive their force, as laws,

\* Crabb's Hist. Com. Law, p. 1.

solely from the express consent of the legislature is, from acts of parliament, the records of some of which remain on the statute book, while those of the others, dating from an early antiquity, have been lost. The theory has the recommendation, that it refers the common law to the proper source of law, namely, the legislative or law-making power. But it is open to the objection, that, as far as the supposed *tacit* consent of the legislature, or instead of it the unknown law-records of antiquity are concerned, it seems to be a fiction. In reference to some particular rules, there may be some evidence more or less satisfactory, that they did originate in the code of king Alfred or in the law of the confessor, or in some other legislative act which has been transmitted to the present times, though not by express legislative enactments, of which the records are lost, or that they have been implicitly recognised by this or that act of parliament. But in respect to a mass of the common law, having reference to matters that were not known in such remote times, and which have been alluded to in the statutes, this theory is plainly a fictitious assumption. And though it is a maxim of the common law, that a fiction of law shall never work wrong, yet it would be evidently dangerous, to make the only basis of a law designating crimes and assigning punishments. Another objection to the same theory is, that it supposes the courts either to contravene or to repeal and enact statutes; for, in the thousand decisions of the courts already overruled, doubted or modified, this theory supposes some six or seven hundred acts of the legislature, more or less, to be involved in error. If all these decisions, while they remained unimpeached, were demonstrative evidence of the existence

statutes, then the courts have by overruling effect repealed so many statutes, and enacted in their stead, or if, according to the doctrine of William Blackstone above quoted, the overruling cases are proof that those overruled were "*not*" and that the rules embodied in the overruling decisions were and always have been law, unless these be overruled in their turn, it follows, necessarily, from the earliest antiquity down to the time of pronouncing the overruling decisions, the courts had been overruling the statute law. In this case, as in many others, a fiction in law is the prelude to a dilemma. In this position, then, that the rules and maxims of the common law are a body of statutes, ought to be abandoned and we must stop at the position of Sir William Blackstone, who states what is the prevailing doctrine on this subject. This doctrine is not that the legislature assents universally to the rules and precedents of common law, and puts them on the footing of statute law, but that it invests the courts or consents to their being invested with authority, within certain limits and subject to certain restrictions, to determine the law. In the case of a statute, the courts must necessarily determine its construction; so in respect to the unwritten law they must determine on the existence of a custom; and this is not the same in effect, as if the legislature itself used the very language adopted by the courts in pronouncing their determinations.

Inquiries, whence does the common law derive its authority, and what are its constituent parts, and its relation to the statute law, though they have an intimate bearing upon our jurisprudence, as well as that of England, yet do not extend to the same extent, and in exactly the same way,

in the two cases. The difference arises from the circumstance, that the constitution of this commonwealth in the article already cited, gives an express sanction and explicitly adopts, the common law as a part of the law of this state. So that in regard to our own prudence, we are at no loss to find whence the common law derives its authority. But when we come to the inquiry, in what respects, to what extent, and with what exceptions and modifications the common law of England has been adopted, we are necessarily led into an investigation of the foundations, principles, constitution, parts, and limits of the common law of England, in order when it has been ascertained of what it consists, to select that part of it which has been so adopted by the constitution.

In making such selection, the constitution gives no other designation of what has been so adopted, than the general description, "All the laws which have been adopted, used and approved in the province, colony or state of Massachusetts Bay, and usually practised in the courts of law, such parts only excepted as are repugnant to the rights and liberties contained in this constitution." As there are no regular reports of our jurisprudence further back than from a period of about twenty years after the adoption of the constitution, we have no direct contemporary evidence of the law so adopted, excepting the known practice of the courts in 1780, the records of the courts previous to this time, and some written memoranda and oral traditions. Nor has it been deemed necessary, when a question has arisen at common law, to go back and show, by some histo-



that the rule in question had in fact been ~~spe-~~  
adopted, approved or practised on in the courts,  
the date of the constitution, the construction put  
on the constitutional provision in question being as  
stated, that the common law of England gener-  
ally as it was applicable to our constitution, and  
has been superseded by the constitution and legisla-  
ture of the commonwealth, was thus made a part of its  
law so that to ascertain this part of the unwritten  
law is necessary, first, to ascertain that of England ;  
and then to see how much of it that is applicable in this  
commonwealth has been superseded by the constitution  
and laws of this State.

A vast mass of materials is thus presented for  
examination and analysis. Numerous digests, treatises,  
volumes of reports, are occupied wholly with the  
evidence in relation to crimes and punishments ; all  
of which must be examined, though they are necessarily  
more or less extent, repetitions of the same doc-  
trines. And as far as they coincide and agree in the  
statement and construction of those doctrines, the mass  
of materials to be wrought up is thereby in effect dimin-  
ished ; but as far as they differ, the labor is increased in  
proportion to the number. It is necessary, also, to ex-  
amine the decisions in this branch of jurisprudence, scat-  
tered through our own reports, and the English reports ;  
and through those of other states, where the points  
are applicable in our own jurisprudence. The  
jurisconsults also consider it to be their duty to consult  
the codes of greatest reputation ; for though  
not direct authority for what is our common  
law, being the results of the experience of other civ-  
il communities, and of the laborious study of learned

men, they afford essential assistance in analyzing our own law on the same subjects, and especially in suggesting amendments. A digest of the penal laws of other states or other countries, particularly of those of Scotland, may be useful in the same way.

As the constitution only adopts the common law in force in 1780, the query may be suggested, whether any English report or treatises subsequent to that period need to be examined. That they should be consulted, there can be no doubt, since they are evidence as we have seen of what the common law of England was, as well before as since that period. Indeed, according to the description of that law already quoted in the latest report of a decided case upon any point is the best evidence of what the law has been from the beginning. Whether this be so or not, such a report is undoubtedly often evidence of what the law has been for a long period. So an act of the British parliament subsequent to 1780, declaratory of the common law has been considered by our supreme court as evidence of more or less weight to show what was the common law.\*

The part of the common law of England, thus adopted by the constitution, does not constitute the whole of the common law of this commonwealth, in the broad sense of that expression as comprehending all the unwritten law, or in other words all that is not the statutory law. It has been said, that "the usage of the country establishes and makes the law of the country."† This proposition is unquestionably true in the qualified sense in which it was no doubt intended. This will be evident

\* Bull v. Loveland, 10 Pickering's Reports, p. 13.

† Commonwealth v. Deack and others, Mass. Reports, vol. i. p. 61.

ple of one of our own statutes upon a subject unknown to the English law. For to give effect it must be expounded ; some construction put upon its language ; and for this purpose, the statute itself or some other one does not furnish the means of interpretation, the common use of which must be resorted to, not merely to fix the meaning of particular words, but often to determine the meaning of entire clauses and provisions. This is a part of the unwritten law, which must exist in all common-law countries, and no less in civil than in criminal jurisprudence. For instance, a statute passed in England in the sixteenth century after the first emigration to this state, regulating the negotiability of promissory notes, was early adopted into our jurisprudence, previously to the adoption of the constitution, and thus became a part of the unwritten law. The few statutory provisions in the commonwealth, in relation to this commercial law, and the few words, in which the contract is usually expressed, constitute the written law as between the parties to it. And yet to find out all that the contract imports, it is necessary to read through the statute. So a penal statute fixes the relations between the parties to it, between the community on one side, and each citizen on the other, and to find out all the relations and obligations thus created, much must be learned from the statute itself, though it may suggest, does not ordinarily cannot, fully express.

Another extensive branch of unwritten law is included under the title of *practice*, that is, the rules and proceedings and usages of the courts, which in their details are never attempted to be laid down



in any code, though their outlines and general principles may be given by the written law.

The unwritten law, then, on the subject of crime and punishments, presents a very extensive mass of materials, very widely dispersed, out of which the code is to be constructed; nor is the task of constructing a symmetrical system, out of these materials, by any means free from difficulties. For the most part, the rules, which constitute this branch of law, must be traced back to and be extracted from adjudged cases. And, as has been remarked by Mr. Livingston, to enhance the difficulty of this process, the cases on the penal law have been reported much less satisfactorily than those arising in civil jurisprudence; so that in many of them, it is not easy to learn what was the rule of decision. Sometimes the case being stated several distinct grounds of the decision are given, but whether any one of those was considered a sufficient one, on which to rest the decision, or, two or more were considered to be requisite, does not appear by the report. Sometimes where the case has come before a court consisting of numerous judges, it is said that some of them were governed by one reason, others by another, in concurring in the decision, but how many were governed by this or that reason is not stated, and consequently, though the case was solemnly adjudicated upon and formally reported, it is not an authority to any rule whatever.

In other instances, a mass of facts is given, and the decision stated for or against the accused, but no reason or no doctrine, is precisely laid down; nor can it always be satisfactorily deduced from the facts stated, taken in connection with the judgment rendered, since the facts



effectively stated, and there are instances not which a report of a case, having been acquired some years as correct, has on resorting to been found to be erroneous. These were of errors which the record supplied the means of finding, but every thing material to the decision always appear on the record, and an error or in regard to any matter which does not so appear corrected or supplied only by resorting to the report of the judge, before whom the case was heard, and some other report of the case.

The history of this branch of jurisprudence supplies many instances of errors in the reports of cases which have been thus corrected. In regard to defects of these descriptions, in any report of an English case which cannot be remedied by resort to some other published report, the commissioners cannot, at a distance from the place where the proceedings were held, ascertain either the true state of the facts, or the grounds of the decision ; and the labor, perplexity, and uncertainty of the search, though not enhanced by the distance of place, are sufficient discouragements to undertake it, excepting in those cases where the most important questions are involved in the investigation. The safest course, at this distance, seems to be, to doubt and reject the authority of cases, the reports of which are evidently defective, in some material particular, of the accuracy of which there is reason to

think the case is accurately reported, and the rule of law distinctly appears, then the question arises, whether it is sufficient evidence of that rule being a part of the common law. For though the decision of the

courts are the most authentic evidence of the common law, it does not follow that all of them are equal evidence, and that every one of them is a demonstration of some point of the common law, whether given by a superior court, or a subordinate one, by one judge or many judges, by a unanimous voice, or a bare majority, and whether pronounced in haste on a first impression at the trial, or on solemn deliberation by the assembled judges. There is such a thing as the *weight* of evidence in matters of law, as well as in matters of fact, and as the testimony of some witnesses is very slight proof, while that of others is very strong proof, of the facts submitted by them, so some decisions of courts are very inconsiderable evidence, while others are very cogent evidence of the law. And then the number of decisions on a point of law is to be considered, no less than that of witnesses to any matter of fact. Thus, Mr. Christie says, and truly, that the number, and authority of decisions concurring in the same doctrine, may be great, as to establish as law what is flatly absurd and unjust.

But no one will attribute this efficacy to all precedents indiscriminately. In extracting the rules of unwritten law from the great mass of decisions through which they are scattered, it is necessary to consider each case, the weight of the authorities by which they are supported, and even sometimes, whether they are supported by an authority entitled to any weight whatever. Particularly in case of discrepancies it is necessary to compare the weight of authorities on the two sides of a question. This comparison is to be made not only between different cases, but sometimes in the same one, where the judges were divided, and w

of one judge is, on the case being reserved, by a small majority of all the judges. And this analysis, though there are instances of so firmly established, that their binding authority cannot be called in question, however anomalous and unreasonable they may be, yet in very many cases, at least, (what proportion of the whole it is to say,) their mere naked authority, independent of their reasonableness, and their conformity to established general principles, is by no means conclusive as to preclude all examination or question.

It is understood by the commissioners to be the duty to divide the component parts, and such the deposit of the unwritten law, which the legislature produces to a systematic code, and such the propositions gone through, in order to extract the rules and positions, of which such a code must consist.

The commissioners had hoped, that in one part of their duty, namely, that of settling what is the common law of England, they should have been able to produce the final report of a board of commissioners appointed under an act of the British parliament in 1833, for the purpose of collecting and arranging the doctrines of that law. It does not, however, appear that they have as yet brought their labors to a conclusion.

It is a task of no little difficulty and importance, in the preparation of the proposed code, relates to the minuteness and particularity, to which it is expedient to carry the work. For a code covering precisely the same subjects, may be very short, or may be expanded to great bulk. For instance, the written law provides, that whoever commits murder, shall

suffer death, or instead of this concise enactment may define what is meant by murder, and having given this description, may go still further, and explain and illustrate it. And yet in either case, the code covers precisely the same extent of subjects.

It appears to the commissioners, that the codification of the criminal law should only stop at that limit going beyond which, the law cannot be made more plain, precise, and definite. For where the law requires the citizen to do or abstain from certain things under a penalty, and invests officers with authority to use coercion and inflict pain, and stamp ignominy, it seems that it cannot be too explicit in laying down the rules to be observed. To determine whether the criminal laws of this commonwealth answer this description, and whether they admit of any improvement, it seems to be sufficient to refer to the sources to which it was necessary to resort in order to find them, and the laborious examination by which alone, they can with probable certainty be ascertained, as already described in the former part of this report.

In proceeding to the performance of the duties of the commission, another material question arose, as to the *form* in which the code should be prepared, as distinguished from the matter or provisions of which it should consist, for these were prescribed, namely, those of the common law, but they might be framed into codes differing from each other very much in form, and yet embracing substantially the same laws. Upon this question, the commissioners were at the commencement of their labors in much doubt, and they found among themselves, very considerable diversity of opinion. It was evidently necessary to settle this question in



nce they could not otherwise pursue the work  
t. After long and repeated discussions, it was  
proposed, that each one should attempt the exe-  
of some title, in such form as he might think  
Repeated specimens of this description were  
vely produced and compared, from which it ap-  
that they were gradually converging towards the  
lan. In these discussions and tentative speci-  
he commissioners had the benefit of the great  
g and experience of the former chairman, until  
nounced to the board, that the state of his health  
d it necessary for him to vacate his place in the  
sion.

form subsequently adopted will appear by the an-  
specimen, which it is one of the principal objects  
present report to exhibit to the legislature, with  
ding reasons for its adoption. The specimen  
ow that the commissioners do not understand it  
been the intention of the legislature, that they  
prepare a digest of the common law like those of  
s, East, Russell, and Deacon, nor commentaries  
ne model of those of Sir William Blackstone,  
he legislature, after having revised and corrected  
at approve by some collateral enactments, as be-  
paramount authority, and as far as it should go  
ding the authority of the common law prece-  
but that they were to report a set of rules and  
tions, expressed in a language which might with-  
propriety be assumed by the legislature. Ac-  
ly, all expressions of mere opinion, of supposi-  
f doubt, of probability, of inclination to one or  
er side of a question, and formal statements of  
s and reasons of the propositions laid down were

to be avoided, and a direct assertion of what the legislature declared the law to be scrupulously adhered to in every part of the code ; which would thus have the character of an act declaratory of the common law ; this being the character which it was supposed the legislature intended to give to the work.

At first the commissioners entertained serious doubts, whether the mass of materials before them could possibly be wrought into this form, without too much straitening and embarrassing the practical application of the rules so constituting the unwritten law, and destroying its elastic and expansible character, and rendering it too rigid and unflexible. But, upon the whole, they are well satisfied, upon experiment in the reduction of different titles to this form of expression, that the work may be so executed, and yet not be liable to such objection. The particular phraseology used in any part of the code might of course render it liable to the defect in question ; but this, it is apprehended, would be owing to an injudicious and unskilful manner of executing the plan in any particular part, and not to any necessary result of the plan itself. It is true, that the propositions thus laid down as law must thereafter be taken to be the law, until it shall be otherwise determined by the legislature. In this respect, it will be precisely like those parts of the existing common law, which, as has been shown, must remain to be the law of the land until it shall be otherwise declared by the legislature. This is only saying, that they would be *law*, for a rule that is subject to be changed, without notice, is not a law, but merely the ground of a greater or less degree of probability of what may be law. It does not appear, that in any other respect, the proposed plan of the work, will

ly render it liable to the objection above men-

This form of executing the work necessarily is the not unfrequently clearing up, by legislative authority, the doubts, and ambiguities, and of settling discrepancies, and the conflicts of doctrine and authorities, presented in the books. It results in a revision of the common law by the legislature to the extent of codification, and this is one object in view, as appears by their resolve.

Determining on the form of the code, a consideration already mentioned had much weight, namely, that in some parts the common law supplies both the text, the references, and the comments; in other parts, the existing statutes form the text, and the common law is the comment. As far as any offence, or any variety or omission of an offence now punishable, is omitted in the written law, so far the unwritten law must supply the whole materials of the code. Now, as it is not contemplated by the legislature to change the provisions of the existing statute law, these must remain, and as far as they go, constitute the law under each title, and to be adapted, in a systematic form, the doctrines of the common law, relating to the same subjects. The statutes of the criminal law are in the form of declarations, commands and prohibitions. This is the appropriate form, where crimes are forbidden, and punishments prescribed, or the duty of magistrates and officers prescribed. Whereas, an act declaratory of the common law is a different form of enunciation. Now as the common law proposed for codification consists partly of what is declaratory, and partly of what is prescriptive, in effect, and practical administration, commands and prohibitions, and the resolve under which the committee is constituted, proposes the preparation of a



“systematic code,” and as such a code can be framed only by adapting the common law to the existing statute law, in such manner, that they may, taken together, form in fact only different parts of the same thing, forming the entire systematic body of the criminal law, there seemed to be but two methods, in which the work could be executed. One method would be to reduce the common law to the ordinary statutory phraseology, and to expand the existing statute law, so as to make it commensurate with the common law. The other method would be, to mould those parts of the common law which are homogeneous with the provisions of the existing statutes generally, into a similar form of phraseology, and enactment ; and to cast the rest of the common law, consisting of deductions, expositions and illustrations, in the form of a general declaratory act. This does not involve the necessity of two distinct statutes, for the same statute may be declaratory in part, and in part mandatory, and prohibitory. The commission had no hesitation in adopting the latter of the two methods. They propose accordingly to fill the breaks and chasms of the present statutes, by introducing the appropriate parts of the common law in a similar form of phraseology. It is true, that those parts of the common law, which only fill up chasms in the provisions of the existing statutes, might be all thrown together in a distinct additional act, but this would render it necessary to repeat many of the provisions of the present statutes, and would extend the additional act to a considerable magnitude, and make it of a very miscellaneous and wholly unsystematic and confused character, and render the revision of the work by the legislature



perplexing, by reason of the separation of the parts of each subject matter.

it should be deemed expedient eventually to use parts of the common law into a distinct act or statute, the decidedly best mode of presenting the legislature would seem to be, to present a combination with those parts of the existing law with which they are connected, that it may be obvious how the whole law will read, thus reduced to a written form. The commission would not be understood as intimating any doubt of the expediency of permanently connecting together, and explaining, all the law on each subject, both the existing written law, and that which is proposed to be added, and do not see how the work when completed can otherwise be considered a systematic code ; the common law as already suggested being when collected and arranged only a part or fragment of each subject, (where the existing statutes have covered a part of a title, as they do of most titles,) cannot constitute a system ; it is only as connected with the existing written law, that it can be rendered systematic ; and the work would lose its symmetrical character by severing its parts, and disjoining and dispersing their fragments in different places.

As regards amendments of the common law, the commissioners do not understand it to be contemplated by the legislature, that they shall studiously seek to amend the common law, but to confine themselves in this respect to amendments as seem to be essential to the consistency and symmetry of the system, and such as may be brought upon their attention, by the plainest reasons. It is very obvious, on the reading of any title, that the

work of codifying the common law, and forming it into a system, could not proceed to any useful purpose, without making amendments in those parts, which, when brought together, are found to present incongruities and without the exercise of discretion in stating what is proposed to be considered the law on numerous doubtful points, instead of undertaking the all but endless task of nicely balancing conflicting authorities, and stating what it now is. Wherever an amendment is proposed, it will be mentioned in the notes, and the reasons given, unless they seem to be sufficiently obvious on the face of the amendment itself.

Though the commissioners understand it not to be their duty under their commission to propose changes in the provisions of the existing statute law, and aware of the difficulties and labor and responsibility of preparing such work will, without such addition, be quite as great as they desire, still this will not prevent them from occasionally suggesting to the legislature a modification of the provisions of the existing statute law, when it seems to be recommended by urgent considerations, and especially when it appears to be essential to the harmony and symmetry of our laws and jurisprudence. A case of this description appears to them to occur in the law of homicide, in respect to the distinguishing of murder into degrees, according to the greater or less atrocity of the crime, as will appear in the specimen accompanying this report.

Upon this plan when completed, the entire body of written criminal law will consist of two component parts, one comprising the mandatory, prohibitory, and permissive provisions, and the leading and fundamental principles of the law ; the other, of expositions, inferences and

3. The law now consists of these parts, and any of laws must be so composed, whether expressed in the form of written or unwritten law, or of verbal descriptions, and in whatever proportions. The difference in form, between the plan proposed and the codes, that have come under the observation of the commissioners, is, that in those codes, these two different parts are put together, in a continued text, and they generally contain but little beyond the provisions of the class first above mentioned ; whereas, in the proposed work, the different portions of the expository and illustrative part will be appended to and accommodate to the provisions of the other part, to which they respectively relate, and thus be placed in the most intimate connexion with them, without, at the same time, interrupting the continuity of the main and leading provisions, which may be called the integral part, consisting of the provisions of the existing statutes and such additions to the common law may supply, as already expressed.

This form was in a manner forced upon the commissioners, by the circumstance, that the provisions of the existing statutes were to be retained, and those of the common law must therefore be framed and adapted to them.

But on the whole, upon experiment, they are of opinion, that it is the best form and the one which would be chosen were it left entirely to their discretion. It appears to them to be more simple, systematic, and convenient to read or consult, than the plan usually followed.

In the first instance, one essential circumstance in the definition of robbery is the taking of a thing from another. The unwritten law goes farther and explains what is meant by a "taking" in this application of the term, it

seems to be quite as symmetrical, to append this enunciation, by reference, as to insert it in a subsequent of what may be called, for the present purpose text. Wherever it is placed, it does not purport to add to or subtract from the section to which it relates, but so is not properly preliminary to it, or a continuation of it. It is essentially collateral and subsidiary, and so it is to be most appropriately so presented.

In order to facilitate the revision of the code, by the legislature, it is proposed to refer to the authorities from which each part of it is drawn, or where the subject is treated ; for where the law in its present form appears to be ambiguous or obscure, as it must be confessed is too often the case, though it may suggest suggestions for the code, it can hardly be considered as an authority for such provisions. Where the commissioners doubt whether the authorities fully bear out the proposed written law, the attention of the legislature may be called to the circumstance, in the notes accompanying the code.

In another respect, also, they propose to depart from the usual practice in other codes, as will appear in the specimen, namely, in giving concise illustrations from adjudged cases. They at first doubted whether such illustrations would with propriety be assumed by the legislature, but upon experiment, their doubts on this point have been entirely removed. It appeared to them, that this method is attended with very many advantages. It renders the law more intelligible and clear than it could otherwise be made. It exhibits the construction, spirit, and scope of the law, illustrated in the most impressive manner. It adduces directly and essential authoritative evidence of the unwritten



s to guard the commissioners from mistakes in the code, and affords great facility to the legislator in detecting mistakes, when such may occur.

As to the language to be adopted, it is not, as the commissioners apprehend, expedient to attempt to explain all technical terms, since many of these have a well-defined meaning in legal phraseology, which cannot conveniently be expressed in each particular case, by the substitution of definitions. The occasional use of such terms will make the phraseology more concise, and they are to be explained in a glossary, forming a part of the code, their meaning can be readily ascer-

The commissioners respectfully submit their preliminary report, with the accompanying specimen, to the Senate.

WILLARD PHILLIPS,  
JOHN GRAY ROGERS,  
LUTHER S. CUSHING,  
SAMUEL B. WALCOTT,  
JAMES C. ALVORD.

SENATE, *February 1, 1839.*



# S P E C I M E N .

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## PRELIMINARY NOTE.

men, which is in accordance with the general plan of the  
rs, as developed in their report, consists of a portion of  
ed work upon the law of murder. It is presented in three  
st) the statute, (2d) the exposition, and (3d) notes. The  
tute, which is recommended to the consideration of the  
s in three sections, containing the definition and provisions  
ishment of murder. This embraces, generally, the whole  
e subject; as, if it should be adopted, no one could be  
f murder, unless on account of a crime, coming within  
on in the first section; or be punished in any other manner  
ided in the second and third sections.

*position*" is not intended to have nor can it have the effect  
y different or additional law: but only to explain and illus-  
es contained in the statute, by various cases, and principles  
tion and application, which are scattered through the books  
lence. Nor does the exposition pretend to exhibit *all* the  
nder the law, which may exist, or which may possibly arise  
ut such only as have been adjudged, and such as are neces-  
der plain and definite the practical application, to show the  
imits of the rule, and to settle questions of construction,  
often of great difficulty, not only on account of their in-  
racter, but the present form of the common law, and the  
d conflicting opinions, which have been entertained and  
d upon them.

*notes*" will form properly no part of the code, when adopted,  
orted with the text, to aid in examining the sources, and, in  
ure, the reasons of the opinions of the commissioners, and  
ilities for correcting any error, into which they may have  
an inconsiderate or mistaken judgment.

## AMENDMENTS.

Commissioners have recommended few substantial amendments  
in this part of their work. They propose none indeed,  
not properly be considered as merely formal, excepting  
important one, which they recommend in the establishment  
in murder, in order to regulate the punishment, according

to its greater or less atrocity. They had some hesitation in de- to propose this amendment, not from any doubt as to its inherent propriety; but lest, in doing so, they might overstep the limits, after much consideration and in view of the resolve under which the commission was constituted, they have assigned to themselves for which they have given their reasons in their report. They state that the recommendation of any fundamental change in the position of the state would be without these limits. Many ardent friends of the present form, and among them men of great excellence of character, have attacked the whole system of capital punishments, as wrong in principle and injurious in practice. The commissioners do not however consider the decision or the discussion of that question as within the powers delegated to them; and have not therefore even considered their own views upon the subject. That there shall be the punishment of death, applicable however to the very highest grade of offence, they consider as, for the present at least, the settled policy of the commonwealth, a policy, which, if they had the disposition, they would not the power to disturb. It is a question too, it may be added, perhaps *of fact*, depending upon the practical operation and results of the system, than of principle, derived from the inherent rights of man, or the abstract powers of human government; and such questions, it belongs peculiarly to the immediate representatives of the people to originate and decide.

But the adaptation of established punishments to various offences is a question of a different nature, depending upon widely different considerations. Upon nothing perhaps does the symmetry, as well as the general perfection of a penal code, more essentially depend than upon preserving, on known principles, a due proportion between crimes and punishments; and any code, which should neglect this obvious consideration and fail to preserve the relation of one to the other, and of both to the whole, if it should be a "systematic code," would be so only by reason of an artificial connexion, and not by any natural harmony of its parts.

If the punishment of death can be rightfully applied to any offence, it surely should be to that of wilful, deliberate, premeditated murder, for this is the most fearful, as well as the most atrocious, of all individual crimes. But, by the gradually extended meaning which has been given by the common law to the word "*malice*" as one of the ingredients of murder, it has been made to include many cases of unintentional killing, and a great variety of offences terminating accidentally in death, which have hardly a shade of the dark and deep malignity of the original crime, and which cannot, without great injustice and an entire disregard of the principles governing the wise adaptation of law to crime, be classed with it, as of the same grade, and deserving of the same punishment.

It is, for instance, a well established principle of the common law that if one engaged in the perpetration of any "*felony*," [a word of wide and somewhat doubtful interpretation,] shall kill another, though accidentally, and where the offender could not have foreseen the fatal sequence, he is guilty of murder. "As if," says Lord Coke, (3d



meaning to steal a deer in the park of B, by the glance of a hunter, killeth a boy that is hidden in a bush, this is murder, although he had no intent to hurt the boy, nor knew of him." Or, to make the principle more applicable here, from other authors, (1 East, 255 and 258; 1 Hawkins, ch. 29, § 11.) "Where A. shoots at a deer in the park of B., and by accident kills a man; if his intent were to kill the deer, and the death of the man is collected from the circumstances, it is murder by reason of the felonious intent." This principle, applied with us, confounds very different degrees of crimes, and the depravity which they indicate, and the terror which they are intended to spread through society. In the case just quoted, A. is guilty of murder or any similar guilt in his heart, and is not less a murderer, in its true and original sense, a murderer. He is a man, voluntarily engaged in the perpetration of a mean and heinous crime, but a crime vastly less than murder; and it is an accident which has connected with it in any degree, the responsibility of blood of a fellow creature. Undoubtedly, regard is to be had to the consequences of crimes as well as the motives, and the punishment is to be adapted to them; but this is only true, in its full extent, when the consequences might be foreseen and guarded against, and so enter into some part of the original design; and the principle cannot be extended, so far as it has been, to mere collateral consequences. The commissioners would not indeed go to the length, which the commissioners for forming a penal code for India," have, in recommending, that "when a person engaged in the commission of an offence causes death by pure accident, he shall suffer only the punishment for the offence, without any addition on account of such accident; but they would mark broadly the distinction between such an offence occurring incidentally in the commission of an inferior crime, and the deliberate assassin.

Extract from the report of the India commissioners, the brief substance of their opinions. "To punish as a murderer every man, who, in committing a heinous offence, causes death by pure misadventure, which evidently adds nothing to the security of human life. No man can so conduct himself as to make it absolutely certain that he shall not be so unfortunate as to cause the death of a fellow creature. The utmost that he can do, is to abstain from every thing which is at all likely to cause death. No fear of punishment can induce him to do more than this, and therefore to punish a man who has committed this can add nothing to the security of human life. The only effect, which such punishment can produce, will be to deter people from committing any of those offences, which turn into murders and themselves mere accidents. It is in fact an addition to the punishment of those offences, and it is an addition made in the very nature of the offence.

For example, hundreds of persons in some great cities are guilty of picking pockets. They know that they are guilty of a crime. But it has never occurred to any one of them, nor would it occur to any rational man, that they are guilty of an offence which is fatal to human life. Unhappily one of those hundred attempts to take the life of a gentleman, who has a loaded pistol in his pocket; the trigger is pressed by accident; the pistol goes off; the gen-

tleman is shot dead. To treat the case of this pickpocket differently from that of the numerous pickpockets, who steal under exactly the same circumstances, with exactly the same intentions, with no risk of causing death, with no greater care to avoid causing death, to send them to the work-house as thieves, and him to the gallows as a murderer,—appears to us an unreasonable course. If the punishment for stealing from the person be too light, let it be increased, and let increase fall alike on all the offenders. Surely the worst mode of increasing the punishment of an offence is to provide, that, besides ordinary punishment, every offender shall run an exceedingly small risk of being hanged. The more nearly the amount of punishment can be reduced to certainty, the better. But if chance is to be admitted, there are better ways of admitting it. It would be a less capricious, and therefore a more salutary course, to provide that every fiftieth or even hundredth thief selected by lot should be hanged, than to provide that every thief should be hanged, who, while engaged in stealing, should meet with an unforeseen accident, such as might have befallen the most virtuous man, while performing the most virtuous action.”—(Repeal Note M., pp. 64-5.)

See also the remarks of Haus upon the provision of the revised code of Belgium, making murder more or less aggravated, as it should or should not be connected with the commission of another crime (Haus's observations &c. p. 202.) Also the remarks of Mr. Livingston on this subject in the preliminary notes to his code (pp. 182-183.)

It is very obvious, that this indiscriminate application of the punishment of death to all cases of either actual or implied malice, is much more out of place in our system than that of England,—for their code in its theory at least, is more sanguinary than our own. There, according to the theory of the common law, every felony involved a forfeiture of the lands and goods of him, who committed it, and was almost uniformly punishable with death, with or without the benefit of clergy. Every crime indeed, which was made a “felony” by statute, and to which there was no special provision, drew after it, as of course, the punishment. Where then the malicious purpose to commit one felony was transferred by the law to another, which resulted, though incidentally, in the execution of such purpose, little violence was done to the system. But here, where a felony has no such necessary consequences,—where its commission involves no forfeiture, and is in a few instances only punished with death, the disregard of the degree, in the malignity of the actual purpose, is at war with our general principle of punishment. The common law of England, in this respect, adapted to a system wholly unlike our own, and is not “suitable to our circumstances, and the general spirit of our institutions.”

It is another familiar principle of the common law, that every killing shall be presumed to be with malice and therefore murder, unless the contrary appear; and although manslaughter is defined to be “the killing of another unlawfully and in the fury of one's mind,” yet it has been often decided that passion is not sufficient to reduce the killing to this grade of crime, if the provocation, which excited it, were words only and not by any actual bodily violence. The law has shown its indulgencies for pain of the body, but none for pain of the mind.



does not know, that the provocation may be as great, as induce, at the moment, a dangerous blow, in the one case. Upon some temperaments, indeed, and those sometimes men not of the most debased nature, the effect might be more and more irritating in the first case than in the last; and allows no mitigation, no apology for a human infirmity, wrought upon by derision or insult of word or gesture, provoking; and thus, where there is only the *moral* guilt of man, the offender pays the penalty of *legal* murder with his life.

These are not unfrequent. In a case before the Supreme Judiciary, Hampden, Sept. T. 1837, the defendant was tried on an indictment for the murder of Jones. It appeared that he was sitting by the company with several others, when the deceased entered the room and addressed him in language of the most cruelly insulting and insulting character, which he withstood for a while with a remonstrance, upon its being repeated in a new and still more aggravated manner in a phrensy of passion produced by it, he seized the defendant by his side, and struck the deceased a blow, which produced death. Here there was clearly no intention to kill and no felonious purpose whatever. The offence was committed in the heat of passion,—“the fury of the mind,”—produced by a provocation as adequate to excite it as any bodily injury; and fell far below the deep guiltiness of the deliberate assassin. An undoubted murder, as it was, under our laws, one jury would not agree to a verdict of conviction, but the second rendered a verdict of guilty, and the sentence of death was pronounced upon the prisoner: but jury, judge and prosecuting officer, joined in recommending him to the mercy of the executive, and his punishment was commuted. It is themselves ought to make these natural distinctions, and to amend the criminal code, so that it shall require the executive to provide for widely different purposes, to soften and harmonize

the criminal code, which sends such a man to the gallows, while it allows to imprison him, who knowingly swears away his life, and has the double guilt of wilful perjury and deliberation upon his soul, cannot commend itself to that universal love of justice which is the best support of law.

Commissioners propose, that there be established two degrees of murder, the one, punishable with death, including all cases of wilful and premeditated killing, (indicated in our law by the words “expressly intended,”) and those cases also where the killing occurs in the perpetration of a crime, itself punishable capitally, and where the intent may properly be transferred to the act;—the other, punishable with imprisonment for life or a term of years, including all cases of murder, where the malice is “implied,” contrary to the general or particular presumptions of law.

This proposition has not certainly any merit for its originality, as similar provisions, with nearly the same limits, are now established in several of the United States, as well as more or less extensively in nearly every country on the globe.

The act of New Hampshire, (act January 13, 1837,) provides that murder hereafter committed by poison, starving, torture or



## HOMICIDE.

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### I. MURDER.

I. Whoever shall unlawfully kill any human being, with malice aforethought either express or implied, shall be deemed guilty of murder. (a)

II. Whoever shall commit murder, with malice aforethought, or in the perpetration or attempt to perpetrate any other crime punishable with death, shall be deemed guilty of murder in the first degree and shall be punished with death. (b)

III. Whoever shall commit murder otherwise than as set forth in the last preceding section, shall be deemed guilty of murder in the second degree, and shall be punished by confinement in the state prison for any number of years. (b)

### NOTES.

The commissioners propose, in the first section, to place the general definition of murder in the common statutory form, for the reasons stated in their general report. They refer, for the varying definitions of murder, at different periods of the common law, to *Kin's Laws of the Anglo-Saxons*, 480; *Glanv.* L. 14, ch. 31; *Be's Mirror*, 46; *Dalt.* ch. 95; *St.* 14, E. 3, ch. 4; *Bracton* L. 3, ch. 1; *Britt.* ch. 6, § 1; *Fleta* L. 1, ch. 30; *Kelham's Norman Law*, "Murder"; *Cowell's Dict.*, "Murder"; *Blount's Law Dict.*, "Murder"; *Cowell's L. Dict.*, "Murder"; 3 *Inst.* 47; *Staud.* B. 1, ch. 10; 1 *Hale*, 424-5; 1 *Hawk.* ch. 31, § 3; *Vin. Abr.* "Murder," A. 1; *McNally*, 553; *Foster*, 256; 4 *Blk. Com.* 198; 1 *East*, ch. 5, § 2; *Abr.* "Murder," A.; *Jacob's Law Dict.*, "Murder"; 2 *Ld.*



Raym. 1487; Kelynge, 121-127; 3d Chitty, 723; 3 Stark 1 Russell, (ed. 1831,) 421; Archbold, 818; 2 Deacon, 89; Coe, 562; Davis, J. 309; Davis, Cr. L. 92; C. J. Parson (Selfridge's Tr. 3); Brockenborough, J. in 6 Randolph's Va. 6 Mass. R. 139; 7 Dane, Abr. ch. 212; Halsted's R. 242; J., 1 Wheeler's C. C. 274; Prince's Digest of Laws of C. (1st ed.) 622, (2d ed.); Rev. L. of Indiana, (1831,) 180; R. Illinois, (1833,) 133.

It will be seen, that, for many centuries, "murder" has been used to signify the highest grade of culpable homicide, and the definitions of different authors are substantially the same.

The definition of lord Coke, (3 Inst. 47,) as modified by Justice Blackstone, (4 Com. 198,) is the most celebrated for its fullness and accuracy, and has been copied by nearly all subsequent writers upon the subject, and adopted, with slight changes, by the courts, and into the statutes of several of the United States. It is: "Murder is where a person, of sound memory and discretion, unlawfully killeth any reasonable creature in being under the king's peace, with malice aforethought, expressed or implied."

The words, "*of sound memory and discretion*," are omitted in the present definition, because the rules governing exemption from punishment for want of capacity, are *general*, applying as well and in the same manner to other offences as this, and therefore belonging to the general part of the code.

We omit also the words "*in the king's peace*," or "*in the peace of the state*," (as in the definition of Davis, and in the statutes of Virginia, Indiana, and Illinois,) because they are not only unnecessary, but calculated to mislead. For it may be murder to kill a person at any time engaged in the perpetration of a crime, or even an alien enemy, "unless it be in the actual heat and exercise of war;" (3d Chitty, 433; Archbold, 320;) in which case, the idea of murder is excluded by other parts of the definition, for then the killing would be "*unlawful*," or "*with malice*." These words are unnecessary in an indictment. (3 Chitty, 75; 1 East, 345.)

We have substituted "*any human being*," for "*any reasonable creature in being*," because the former expression is more precise and less liable to misapprehension; for, in a popular sense, a brute is not a reasonable creature, and yet he may as well be the subject of murder as any other human being.

The word "*malice*" is here used in a peculiar sense, different from its more obvious and popular meaning, yet it has been brought into the law of murder, and has obtained, in this connection, so precise and peculiar a signification, that the substitution of any other word would lead to much doubtful interpretation. The use of any substitute, indeed, we could not be sure that it would accurately state the law.

As will be seen more fully hereafter, "*express malice*" is generally, malice proved to have existed *in fact*—"implied malice" is such as the law *presumes*, often contrary to the fact.

- (b) The second and third sections are proposed as a substitute for ch. 125, of Part 4 of Rev. Stat., which is as follows, (pp. 125-126): "*Every person, who shall commit the crime of murder, shall be punished by death for the same.*"

The reasons for this proposition are fully stated in the preliminary note. The slight change in the *procedure*, which is provided for in another part of the code.

## EXPOSITION.

to constitute the crime of murder, as above defined :

- There must be *a killing* ;
- The killing must be of *a human being* ;
- It must be *unlawful* ;
- It must be *with malice*.

These elements must be combined in every case of this offence, if there be not the first, or only the first, it is not murder; if there be the first and second only, without the others, it is *excusable homicide* ;”(a) if there be the first, and the third, without the fourth, it is “*manslaughter*”(b) only ; if all concur, it is *murder*.

In England, there has been a material distinction between “*justifiable homicide*” and “*excusable homicide* ;” and many cases of the former, of a human being by misadventure, or in self-defence, were in the latter class. The term “*excusable homicide*” imported some degree of guilt, but of a nature so trifling that the law did not stamp it with the guilt of felony. In theory, it was punished with a forfeiture of goods, but in early times the jury finding the fact specially, a general pardon was always granted, under the statute of Gloucester, 6 Ed. 1. ch. 9,) which saved the forfeiture. Afterwards, the judges admitted a general verdict of “not guilty” to be rendered, though at some time, it would seem, without any authority of law. The Statute 9 Geo 4, ch. 31, § 10, put an end to the theory, and sanctioned the practice of acquittal, by enacting, that “no punishment or forfeiture shall be incurred by any person, who shall kill another by misfortune or in his own defence, or in any other manner, without felony ;” but the old terms, though they import no legal distinction, are still preserved in the English books for convenience. In this country, where the doctrine of forfeiture never took root, and is prohibited by the constitution, there was never any punishment for *excusable homicide*, nor other difference as to the legal effect between that and *justifiable homicide* ; but if a case belonged to either, the defendant was entitled to a general acquittal. See upon this subject, 3d Inst. 148 ; 4 Blk. Com. 188 ; 1 Hawk. ch. 28, § 1 & 2 ; ch. 29, § 30 *et seq.* ; 1 East, ch. 6, § 8 & 36 ; Foster, 2:2-8 ; 1 Sell, 532-552 ; Roscoe, 464 ; Parker, J., Selfridge’s Trial, 159. We use both terms in the course of the chapter, because the one is sometimes more appropriate than the other, regard being had to the natural and customary import of the words, and not to mark any discrimination as to legal consequences.

As to the law of manslaughter, see the next chapter.

## 1. THERE MUST BE A KILLING.

Killing is causing the extinction of life by means of some injury. (c)

A killing may be by direct violence, as by striking, (d) bing, (e) shooting, (f) drowning, (g) strangling; (h) or it may be the indirect consequence of an act done, as in killing—by poisoning, (i) starving, (j) corrupting the air, (k) communicating infection, (l) laying a trap or pitfall, (m) letting loose a dangerous animal, (n) generally by any other act, the consequence of which may be eventually is, death. (o)

- (c) Liv. 4; Starkie's Ev. 513, (n. r.); 1 Hale, 429, and notes *infra*.
- (d) Thompson's C., 1 R. and M., 139; Kelley's C., *ibid.* 113; C., 6 Binney's R. 181.
- (e) Thurston's C., 1 Lev. 91; 1 Keble, 454-5, Edwards' C. and P. 401; Goodwin's C.
- (f) Hughes's C., 5 C. and P. 126; Towle's C., 3 Price, 145; ridge's C.
- (g) Dyson's C., R. & R. 523; Green's C., 2 St. Tr. 214; (Harg.)
- (h) Tyson's C., R & R., 345; Huggin's C., 3 C. & P. 414; C., 5 C. & P. 121.
- (i) Saunder's C., Plowd., 474; Gove's C., 9 Rep., 81; Anon. K. Vaux's C., 4 Rep., 44 a. The killing by poison has been everywhere more criminal than any other species of murder. The statute, Henry, 8, ch. 9, declared it to be high treason, and its punishment boiling to death; and under that statute, several persons suffered this punishment. But the act was repealed by 1 Geo. 4, ch. 12.
- (j) Beal's C., 1 Leon, 327; Squire's C., 1 Russell, 426.
- (k) 1 Hale, 431-2; Paris & Fonblanque, (Med. Juris. 111,) on whether death can be produced in this way. However true it may be as to the external atmosphere, it is undoubtedly true, that it may be caused by noxious gases, under many circumstances.
- (l) Castile's C. Stra. 856; Huggin's C. Stra. 882; Bantridge's C. St. Tr. 146 (folio,) 17, 452 (quarto); Paris & F. Med. Jur. 1.
- (m) 4 Bl'k. Com. 35; 1 Russell, 617.
- (n) Palmer, 545; 4 Bl'k. 197; 1 Russell, 622; Roscoe, 571; 430.
- (o) 3 Inst. 48; 4 Bl'k. Com. 196; 1 Hawk. ch. 31, § 4; 1 Hale, Foster, 322; 1 Russell, 425; Archbold, 319; Roscoe, 570; 1000, 900; Davis, C. L. 93; Holloway's C., W. L. 198; Gre. Kely. 64-134; Honneyman's C., Addison's R., 148; Martin's C. & P. 211.]



elling a person to do an act, which is likely to produce, produce death, is a killing ;(*p*) and this though the com- by threats only, (*q*) or the command of one having au-

Russell, 425—6; Archbold, 319; Roscoe, 571.

ans' C., O. B. Sept. 1812, *MS.* Bayley, J. in 1 Russell, 425.

reeman's C., 4 Mason's R. 505. Here the deft., the master of a ip, compelled a seaman in a state of great exhaustion and debility, own to the master, to go aloft, and the seaman fell from the mast d was drowned. The master was convicted of manslaughter.

re a parent, guardian, master, or other person, having the f a child, apprentice or servant of tender years, or of a insane man, or idiot, exposes him to a situation of manifest life, or is guilty of gross neglect or cruelty towards him, ensue in consequence, it is a killing. (*s*)

re a parent places a helpless infant in a hog-stye, where it d ;—(*t*) or on a rock at sea, where it is washed away ; (*u*) t in a remote field, where it is destroyed by wild beasts or ey, or trodden upon by cattle ; (*v*) or exposes it, where ish with cold or famine, or want of care ; (*x*) or a parent, guardian refuses to furnish a child or apprentice of tender firm health, to whom he owes support, with sufficient or tenance, or lodgings or clothing ;—(*y*) or town officers, charge, shift a child from town to town, without sufficient lothing, or other care ;—(*z*) or one carries his sick father, will, abroad in an inclement season, (*4*) ;—in each case, y violated be plain, and the danger apparent, and death onsequence of the act or neglect, it is a killing.

ale, 431, *et seq.* ; 1 East, ch. 5 ; 3 Inst. 53; Kely. 56; 1 Russell, ; Archbold, 319; 1 Hume, 279, and other authorities, *infra*.

East, ch. 5, § 13.

len Wilson's C. 1 Hume, 278.

ale, 431 ; 1 Hawk, ch. 31, § 5.

l's C. 1 Leon. 327 ; Margaret Smith's C. 1 Hume, 279.

aire's C. 1 Russell, 426, note (n); Self's C. 1 Leach, 127; Gould's Salk. 381; Ridley's C. 2 Camp. 250; Elizabeth King's C. 1 me, 279.

(z) Palmer, 545; Holloway's C. 1 Russell, 425.

(s) 1 Hawk, ch. 31, § 5; 1 Hale, 431-2.

So where a jailer confines a prisoner in the same cell with an outrageous madman unbound; or with a person, dying of a malignant or contagious disease; or thrusts him into a loathsome and pestiferous dungeon, knowing the danger, and death follows in consequence, it is a killing by the jailer. (a)

(a) The words in the text are taken almost literally from the words of an eminent writer upon the Scotch criminal law, to which we have been much indebted, especially for illustrations. (1 Humie, 28) the doctrine is undoubtedly that of the English common law. (Britt C. 11 § 9; Staunf. 36; 3 Inst. 52; Palmer 548; 1 Hale 1 Hawk. ch. 31 § 10, note; Foster, 322; Huggins's C. 2d. 1574; 2 Stra. 882; Caster v. Bambridge, 2 Stra. 856; 1 East, § 92; 1 Russell, 459; Bac. Abr. Murder A. See the cases of *Gins*, *Bambridge* and *Acton*, as reported at length in the *Trials*, (Hargrave,) 17 vol. (quarto,) 310-452, *et seq.* (folio,) 9 vol. 146, 182, *et seq.*

It is not a killing, in any case, to give false testimony against a defendant in a capital trial, though he be, on this testimony, convicted and executed; (b) nor to occasion death by the operation of words or signs upon the imagination or passions. (c)

But if words or signs are used, inducing to an act, which causes death; as if a blind man be directed to a precipice, or a deadly weapon be recommended, and death ensue in consequence, it is a killing.

(b) The early writers laid down the law to be, that it was a killing to take away the life of another, by swearing deliberately false testimony at a capital trial. (Mirror, ch. 1, § 9; Britt. ch. 52; Bract. B. 3 ch. 1 see 1 Hawk. ch. 31, § 10. But lord Coke says, (3 Inst. 48) that it is not holden for murder at this day," and such seems now to be the weight of authority. The only case we find is that of *Miel* and others, reported in Foster, 132, and 1 Leach, 44. Defendants were convicted, but judgment was respited, in that the question of law might be fully considered. But the next day the jury general declined to prosecute the case further, and the defendants were discharged from the indictment. The opinion of Michael Foster was against the indictment. Sir William G. G. Stone, however, says, (4 Com. 196,) that the attorney general did not press the point on account of prudential reasons, and not from any apprehension that it was not maintainable, and in East's 54, it is added, that lord Mansfield had said, that the opinion of several judges, including himself, were strongly in favor of the indictment. Most of the more recent writers, however, seem to incline against holding it to be a killing. (4 Blk. 196-7, Chitty's note, 1 Russell, 427; 3 Chitty, 726; Arc.

Roscoe, 573; 10 Am. Jurist. 261; and see Staundf. 36. By our revised Statutes, (p. 732) a particular punishment is provided for jury in a capital trial. The Gothic laws punished this offence by death, 4 Blk. Com. 196, quotes Steirnh. de jure Goth. L. 3, § 1. See also, D. 48, 8, 1.; and Pothier's Pandects, 48, 8, No. 3, which it would seem that in the Roman law, the judge also, if he were bribed, and under the influence of the bribe, improperly condemned a man who suffered death in consequence, was guilty of murder.

It seems to be the well established doctrine of the common law, that the distinction between destroying life by mechanical means or by injury, and by operating upon the fears or passions, appears to be derived from any difference in the criminal nature of the act, for the latter in many cases may show the deeper design and greater malignity, but from the difficulty in the latter, of the proof connecting the act with the result, and the dangerous latitude of the opposite principle. 1 Hale, 429; 1 East, 225; 3 Chitty, 726; Russell, 425; 4 Sturkie's Ev. 514; Roscoe, 570. See P. & F. 1 Juris 110, note (a.) Mr. Livingston recommends the same provision in his project of a code, (p. 437;) and Mr. Hume, (1 Hume, 267,) states it to be the law of Scotland, and quotes the case of Vin. Duff, of Braco, and others, who terrified a woman in childbirth, so that she died, but were yet acquitted of homicide. The English commissioners propose the opposite principle for the code of India, (ch. 18, § 294, illustration (b)), and in a note, (App pp. 8, 9,) defend their opinion, and attack the doctrine of Mr. Livingston without mentioning that it is also that of the common law, in a simple and elaborate argument. We give a short extract. "There are, indeed, few homicides of this sort. It appears to us that a conviction or even a trial in such a case, would be an event of extremely rare occurrence. There would not probably be one in a century. It would be most difficult to prove, to any jury, that death had really been the effect of excitement produced by words. It would be still more difficult to prove, that the person, who spoke the words, anticipated from them an effect, which, except under very peculiar circumstances and upon very peculiar constitutions, words would not produce. Still, it seems to us that the points might be made out by overwhelming evidence; and, posing them to be made out, we are unable to perceive any distinction between the case of him, who voluntarily causes death in this manner, and the case of him, who voluntarily causes death by means of a pistol, or a sword;" and they put many supposed cases in illustration.

See Cr. Law, 94; Liv. 437; and see Evans's C. and Freeman's C. have cited. The illustrations here are borrowed from Mr. Livingston.

If one counsels or assists another to commit suicide, and he commits it, it is a killing by him who thus counsels or

See Cr. C., 4 Repts. 44, (b); 1 Hale, 431; 1 Russell, 424-29; 4 Blk. Com. 188; 1 Chitty, 726; Dyson's C., R. & R. 523. Bowen's C., 13 Am. R. 356. The annotator in Wheeler's C. C. 231, appears to



doubt this principle, but, it would seem, without any in reason or authority. Bowen's case is at any rate decisive of the common law of this commonwealth. In New York the viser is guilty of manslaughter only, (2 R. S. 661 § 7). In the foreign codes, he is punished as guilty of an offence of murder.

Where the hurt done is of a dangerous character, and the cause of death, although there be a predisposing habit or condition of body, without which it would not have been fatal, it is, nevertheless, a killing by means of such hurt. (f)

As if one, infirm from age or sickness, die of blows which have done little injury to another of ordinary strength or health, a killing by him who gave the blows. (g)

(f) *Martin's C.*, 5 C. & P. 128; *Ramsay's C.*, 1 Hume, 183; 1 H. where lord Hale says that he has often heard that wise and judge, Mr. Justice Rolle, so direct; 1 Russell, 429; *Archbold*, Roscoe, 544-6, quotes *Alison*, 149; *Davis's Cr. Law*, § 10, ruling of Hallock, B. in the case of Johnson, at nisi prius, York, 1827, of which there is a meagre report in *Lewin's Crown*, 164, would seem to be in conflict with this principle. The defendant was indicted for killing the deceased while in a intoxication by a blow, which the physician testified might produced death if the party had been sober. Hallock, B. an acquittal, observing, that "where the death was occasioned partly by a blow, and partly by a predisposing cause, it was possible to apportion the operations of the several causes, so as to be able to say with certainty that the death was immediately occasioned by any one of them in particular." The common law, believe, that the doctrine thus laid down and applied to the case then on trial, cannot be the law. It is entirely at variance with the principle established by the previous authorities, and stands in direct conflict with the text; for it would be as applicable to any other predisposing cause, as the infirmity of age and sickness, for instance, as that of intoxication. Roscoe questions the correctness of the decision, and says, "no where, that the commissioners can see, any support in the text, or authority. A case, involving the same question, was before the S. J. C. of this commonwealth, (*Suffolk*, Jan. 1817,) but the opinion of it (in pamphlet,) does not enable us to state very precisely the opinion of the court. Phillips, the deft. was indicted for the murder of Denegri, by striking him on the head with a log, which produced an inflammation of the brain, of which he died. The physicians agreed in their testimony, that the blow was the immediate cause of the inflammation, which resulted in death; but that this inflammation was much increased, and perhaps rendered fatal, by the deceased's intoxication, at the time of the blow, and his subsequent exposure. The court seems to have ruled in favour of the charge of Parker, C. J. p. 16,) that upon these facts, there was sufficient killing, and the deft. was convicted and executed."

This question has been much discussed in other countries, and in different periods, and the doctrine of the text has been almost universally supported.—Such was the Aquilian law as to what shall

emed a killing, D. 9, 2, 7, § 5; Pothier's Pand. 9, 2, No. 4; for that may be fatal to one, which is not so to another," and it is sufficient, if the injury be mortal in the particular case,—so in Tittman's Compendium of the common criminal law of Germany, published in German, 1822,) it is said, "wounds may be mortal, either, first, generally, or secondly, only in the particular instance, according as they would always produce death, upon every human being, or only do so, in consequence of the peculiar bodily condition of the individual; as where the imperfection or peculiar condition of the body, gives to the wound a greater opportunity to become fatal. As for example, where there is an unnatural organization or defective structure of the body: or a particular weakness of any internal or external part, as of the heart or skull; or where the fluids of the body are corrupted; or where there are particular states of the body, as where the deceased is sick or pregnant, or of an advanced or tender age, or the stomach is unduly distended or the like;" and it is held to be equally a killing, whether the wound be such as produces death in the particular case, or such as would always and necessarily be fatal to all. See also Feuerbach's Compendium of the common penal law of Germany, (12th ed. 1831,) 208, pp. 194, and note (b) by Mittermaier. Similar provisions exist in most of the foreign codes. Thus, in that of Saxony, (promulgated March 30, 1838,) it is provided, (ch. iv. art. 120,)—"In reference to the crime of killing, it is of no consequence to the legal adjudication of the mortality of the injury, whether a similar injury might not in other cases be averted by the aid of skill; whether the fatal event might not have been averted by the timely application of proper means;—whether the injury was such as would have been, in general, mortal, or occasioned death in the particular instance, *only by the peculiar state of the body of the deceased.*" So in the project of a code for the Grand Duchy of Baden, (by Mittermaier, 1838) part ii. title 10, § 178. "Every injury is to be considered mortal, which has as the acting cause in the particular case produced death, without any distinction as to whether the fatal result might not have been, in other cases, averted by the help of art; whether even in the present proper means would not have prevented it; whether the injury, immediately, or through other intervening causes growing naturally out of it, has produced the death; whether the injury would have been, in general, mortal, or was so in the particular instance only, *on account of the peculiar bodily condition of the individual, or the accidental circumstances, under which it was committed upon him.*" The same principle is contained in the Revised Penal Code of Bavaria, (1827,) ch. xiv. art. 204; Criminal Code of the Canton of Basle, (1835,) title iii. A. § 118; project of Criminal Code of Norway, (1833,) ch. xiv. § 28; of Wurtemberg, (1836,) title ii. ch. I, art. 223; of the kingdom of Hanover, (1830,) § 224; of the Grand Duchy of Hesse, title 32, art. 216, and in several others.

amsay's C.; Martin's C., above cited.

the hurt done is adequate to and does produce death, it is sufficient to charge him who caused the hurt, although it appear, that, by the use of proper care, or more skilful means, a recovery might have been effected. (h)

of a wound be given, which opens an artery, and the man

die from the loss of blood, it is a killing by means of the wound, though by ordinary diligence in procuring a surgeon, the wound might have been staunched and life preserved. (i)

And this is so, though the hurt be not directly, if it be nearly so, and efficiently, the cause of death.

As if a wound, though from neglect, turn to gangrene or fever, which is the immediate cause of death, it is a killing by the wound, who gave the wound. (j)

(h) Reeve's C. Kely. 26; Edgar's C. Roscoe, 573; quotes Alison 1 Burnett, 551; 1 Hale. 428; 4 Blk. Com. 197, note 30; 1 East, 119; 1 East, 344; 3 Chitty, 726; 1 Russell, 428; Archbold 1 Hume, 184; 4 Starkie's Ev. 1; Wheeler, C. C. 264; Greenleaf's R. 229; Davis, Cr. L. 94; Liv. 437.

(i) 1 Hume, 184, Edgar's C. above cited; Roscoe, 575.

(j) 1 Hale, 428; Reeves's C. above cited; 1 Russell, 428; Archbold

But where the hurt done is not, in itself, either directly or indirectly the efficient cause of death, but other positive and subsidiary agencies intervene;—

as where an injury, not adequate in itself to produce death, has made the occasion of death by means of injurious treatment or the use of poisonous medicines, it is not a killing by him, who caused the hurt.

Thus where one by violence dislocates the arm of another, and an ignorant pretender operates upon the arm for several days, and a white swelling ensues, in consequence of the operation, which proves fatal, it is not a killing by means of the first violence. (l)

(k) See citations in note, (h) supra. This part of the principle is somewhat ambiguously stated by the different authors and judges, with many variations in phraseology. We have not followed either of them literally, but have endeavored to extract the true consideration of all, the true doctrine of the law, having regard as well to the reasonableness of the rule, as the authority by which it may appear to be supported.

(l) Macowan's C. Roscoe 573.

So if death be owing to any incidental and supervening misfortune, which could not have been foreseen, having an accidental and remote connexion only with the hurt, it is not a killing by means of the hurt. (m)

Thus where one, on account of a wound given, is sent to



he takes the erysipelas by infection and dies of it ;—  
 he would not have gone to the hospital, and so taken  
 s, but for the first injury, yet it is no killing by him, who  
 und.(n)

one strikes another, injuring him seriously but not mor-  
 e latter is in consequence placed upon a table or stool  
 on, and he accidentally falls from the table or stool, and  
 quence of the fall, it is not a killing by the first.(o)

ley's C. Lew. C. C. 171 ; Campbell's C. Roscoe, 575 ; quotes  
 n, 347.

bell's C. above cited.

ey's C. above cited.

e no agency, excepting such as occurs in the natural  
 ings, and has its efficacy by reason of the hurt, or the  
 who gave it, intervenes between the hurt and the death,  
 ee :—

robbers give a wound to one, not mortal under common  
 es, and leave him disabled from the injury by the road-  
 d to the cold, and the wound is thus made fatal, it is a  
 e robbers.(p)

well's C, Burnett, 552, in Roscoe, 576.

n can be adjudged, by any act or omission, to have  
 er, unless death ensue within a year and a day from the  
 in the computation of which period of time, the whole  
 on which the hurt was done, is included.(r)

L 53 ; 1 Hawk, ch. 31, § 9 ; 1 East, 343-4 ; 1 Russell, 428 ; 4 Blk.  
 n. 197 ; 3 Chitty, 726 ; 2 Deacon, 809 ; Davis, Cr. L. 95. The  
 on of this rule arises from the danger of connecting, as cause  
 effect, events, remote from each other in point of time.

he commissioners have not thought it necessary, either here or  
 ny other part of the code, to introduce any particular rule, as  
 e proof of what is called the *corpus delicti*, i. e., the proof of the  
 of the killing. The law fixes the rules, as to the *competency* of  
 ence, but what ought to be considered *sufficient* proof in any  
 n case, is generally matter of *fact* to be decided by the jury, in  
 instance, on its own circumstances, rather than of positive,  
 l, regulation. Some writers suppose that the finding of the  
 y of the deceased, is the only *sufficient* evidence of the fact of  
 killing.

Lord Hale, with that humanity which is one of the best of his truly great character, and which nobly distinguishes among the great criminal lawyers of England, says, (2 H. "I never would convict any person of murder or manslaughter unless the fact were proved, or *at least the body found*," and two cases of persons convicted on circumstantial evidence of murder of others, who were supposed to be dead, but afterwards proved to have been living. The case of the Bourne, of Melton, Vt., convicted on circumstantial evidence and their own confession, of the murder of Colvin, who it is proved to have been living, (Bennington county, Oct. 18, the same character, and has often been referred to, in illustration of the danger of such convictions. The passage from Lord Hale is copied without remarks by Blackstone, 4 Com. 356; (1 vol. 442,) and Chitty speaks of it (1 Chitty, 563,) as a "general rule." Russell quotes it, and adds, (1 Russell, 477) "this rule it seems must be taken with some qualifications; circumstances may be sufficiently strong to show the fact of murder, though the body has never been found." See also A. 124.

In Hindmarshe's case, (2 Leach, 571,) the prisoner, a sailor, charged with having killed his captain with a club, and thrown him overboard, at sea. Garrow, for the prisoner, claimed acquittal, on the ground that there was no proof of the death of the captain, and mentioned a case as having been tried before Gould, where the two prisoners were seen to strip a child and throw it into the dock, and its body was not afterwards found. The learned judge observed, that it was possible "the tide might have carried out the living child," and the jury upon this acquitted the prisoners.

The court in Hindmarshe's case admitted the general rule by Garrow, but according to the report, left it to the jury whether the deceased was not dead, before his body was thrown over the sea. They convicted the prisoner, and all the judges agreed to the conviction, he was executed.

The opinion of Gould, J., in the case stated by Garrow, his statement is the only authority for the case) might have been influenced by the allegations of the indictment, as to the manner of the death; for the judge does not intimate that there was not evidence of the death of the child, to go to the jury on that ground seems to have been that there was not sufficient evidence that it died "*in the dock*," (as the allegation probably was,) and the tide, which ebbed and flowed there, might have carried out the living infant."—(See 1 Russell, 473, note 1.) In the other case the ruling might have depended upon the pleadings. In no case is any general doctrine so laid down in the report, that much can be placed upon it.

There have been three cases certainly before the circuit court of the U. S. for the district of Massachusetts, of trials for murder on the high seas, where this supposed principle has been discussed or denied by the court. (The case of Williams and others, Dec. 1818, and reported in pamphlet; Freeman's C. 4 Mass. 505; and the very recent case of Gibert and others, (the 2 Sumner's Reports, 19.)

In the last mentioned case, Mr. Justice Story said, "This position" (that a conviction cannot take place, where the body is not found) "cannot be admitted as correct, in point of common law or of law, unless courts of justice are to establish a positive



ten persons from punishment, who may be guilty of the most heinous crimes. In the case of murders committed on the high seas, the body is rarely, if ever, found: and a more complete encouragement and protection for the worst offences of this sort could not be invented than a rule of this strictness. It would amount to a universal condonation of all murders committed on the high seas." The same reasoning would apply, where the murderer burnt or otherwise destroyed the body.

Starkie says, (4 Starkie, 944,) "Although it be certain, that no conviction ought to take place, unless there be most full and decisive evidence as to the death; yet it seems that actual proof of the finding of the body is not absolutely essential, and it is evident, that to lay down a strict rule to that extent might be productive of the most horrible consequences."

Professor Davis, also, in his work on the criminal law of Virginia, (92,) bears most decided testimony against the rule.

Upon the whole, the commissioners are of opinion, that the proposition of lord Hale, certainly as it has been generally understood, has not been established as an inflexible principle of law, and that it would be unsafe to adopt a rule as applicable to all cases, which is fitted only for a class of them, however large, and which would exempt from punishment every murderer, who should conceal or destroy the murdered body. Undoubtedly, in many cases, the fact, that the body has not been found, would have and ought to have a decisive influence; in others, as where one already rendered helpless, but still living, is thrown into the sea, it would have, probably, little weight; but in all, the question of what is sufficient evidence to prove the death, (and it must be established beyond all reasonable doubt,) should be left, without the restraint of artificial rules, to the understandings and consciences of the jury.

#### KILLING MUST BE OF A HUMAN BEING.

, belonging to the human species, alive and in being, of any age or condition, may be the subject of murder, (a) though sane or insane person, (b) an alien enemy, (c) convicted of treason, (d) or struck with a mortal disease. (e)

le, 428; Archb. 319; 3 Inst. 49; Feuerbach's Comp. (12 edit. 1825,) § 207.

Jamie's C. 1 Hume, 275.

le, 433; Inglis's C. 1 Hume, 275; Maxwell's C., *ibid*.

en's C. 13 Mass. R. 356; in this case the deceased was to have been hung the next day. Vin. Abr. Murder, B. 3.

in's C., 5 C. & P., 128; Jean Ramsay's C., 1 Hume, 267.]

, which is destroyed, must be complete by the birth of the child, and it must be deprived of it. (f)

A child, in its mother's womb, is not in being, nor is it to be the subject of murder, (g) until its whole body is born into the world, (h) and it has an independent circulation. (i)

But if a child be born alive and then die, in consequence of operations administered, or violence done before its birth, or during birth, it is the killing of a human being. (j)

(f) Liv. 346; 1 Hale, 433; Roscoe, 565; Davis Cr. Law, 97, and authorities, *infra*.

(g) The law was formerly otherwise. Bracton said that it was murder, to destroy a child in the womb of the mother, if it was quickened and especially if it had quickened there; and the contemporary writers support the same opinion, (Bracton l. 3 f.; Fleta, l. 23, § 10, 11, 12,) although the contrary is now well settled in conformity with the statement in the text. (See citations in text.) The question seems to have been much discussed by the philosophers and lawyers of Rome, (Poth. Pand. 48, 8, No. 5,) as it has been by the writers of the common law of the continent of Europe. Tittman's Compendium, § 145. And the better doctrine would seem to have been, with both, that the destruction of a child in the mother's womb, after it had quickened there, was the killing of a human being.

(h) Enoch's C. 5 C. & P. 329; Brain's C. 6 C. & P. 344.

(i) Pulley's C. 5 C. & P. 539.

(j) The commissioners have here stated the common law as they believe it to exist. There are no cases in the American reports, the earliest of which they find in the English books upon the subject, is a case before Sir G. Scrope reported in the Year Book (1 Edw. 3, 23, pl. 18.) See it in full, 24 Eng. C. L. Rep. 100, note, (a.) There the defendant had beaten a woman, pregnant with two children. One of them was dead born; the other born alive, and baptized, but died two days after the injury, in consequence (as was charged,) of the beating of its mother before birth. The judges held that the defendant was not guilty of felony, (murder or any homicide,) but of a misdemeanor or trespass.

The doctrine of this case is maintained by lord Hale, (1 Mod. 443,) and Sir Geo. Staundford, (Staund. 21.) But lord Coke denied it to be the law, and insisted "if a child be born alive, and die of the potion, battery or other cause, which happened before its birth, it may be murder," (3 Inst. 50-1,) and quotes Fleta, who goes, as we have seen, much further, (see note g,) by maintaining that it may be murder to destroy a formed child in the mother's womb, certainly if it have quickened there. In Gould's pl. 110 Coke, Fenner and Popham, Js. are said to have ruled that if one "beat a woman great with child, and after the child be born living, but hath signs and bruises on his body, received by the battery, and after die thereof, this is murder (homicide,) the difference is where the child is born dead, and where it is born living, for if it be dead born, it is no murder (homicide,) but *constat*, whether the child were living at the time of the battery, or not, or if the battery was the cause of the death."

The opinion of lord Coke has been followed, by nearly all the writers upon the criminal law, and the authority of the case Year-books, has been for a long time much impaired, if not entirely overthrown. 1 Hawk. ch. 31. § 16; 4 Blk. Com. 198; East, ch. 50, § 14; 3 Chitty, 727; Archbold, 320; 1 Russell, 424, note; 3 Chitty, 727; Roscoe, 565; Davis's J. 311.

A very recent case in England has removed all doubt as to the common law of that country.—(Senior's C., Moody's C. C. 344.) Joseph Senior was convicted of manslaughter (homicide) before the Assizes at Chester, in 1832, for inflicting a wound on a child, during its birth, but before it had breathed, and while it was still in *ventre sa mere*. The case was afterwards submitted to twelve judges, who unanimously held the conviction right.

The commissioners find that child-murder, and especially the killing of illegitimate children, has been the subject of particular provisions in many of the foreign codes, the killing during birth, within twenty-four hours afterwards, being put on the same ground and punished as an offence less than murder. They do not find, however, any provision as to the death of a child, after birth or twenty-four hours after birth, on account of an injury previously received.

The books of the Scottish law, so abundant in illustration of the principles relating to murder, contain, so far as the commissioners know, no cases upon this point. Hume quotes the doctrine from Hawkins, and adds, "but it is difficult to imagine what no more needs be said in such a case,) that in these circumstances, a decisive proof can be obtained of the true cause of the death of the child." It will be seen also, that the difficulty of proof has great weight with Lord Hale and Sir George Staundford.

#### KILLING MUST BE UNLAWFUL.

Killing of a human being, which, &c.

To ascertain what constitutes murder, it remains to be explained what is an "unlawful," and what a "malicious" killing.

#### ERRATA.

- Page 6, line 17, after "what," read "code."  
 " 9, " 12, for "break," read "breaks."  
 " 20, " 29, for "this," read "that."  
 " 21, " 6, for "constitution," read "condition."  
 " 22, " 8, for "report," read "reports."  
 " 30, " 13, for "unflexible," read "inflexible."





# SENATE....No. 22.

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[Reported by the Committee on Banks.]

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**Commonwealth of Massachusetts.**

---

**Year One Thousand Eight Hundred and Thirty-Nine.**

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## **AN ACT**

**for the examination of Banks whose Charters  
have been annulled.**

*enacted by the Senate and House of Representatives,  
General Court assembled, and by the authority  
of the people, as follows :*

**1. The Bank Commissioners, or some one  
of them, shall visit and examine those banks, incorpo-  
rated by the authority of this Commonwealth, whose  
charters have been, or may hereafter be annulled by  
the Legislature, or surrendered by their stockholders,  
at once in every twelve months during the term  
of which such banks are continued bodies corporate**

8 by law, and the provisions of the second and t  
9 sections of an act entitled, "an act providing for  
10 appointment of Bank Commissioners," passed on  
11 twenty-third day of February, in the year one t  
12 sand eight hundred and thirty-eight, shall apply  
13 banks whose charters have been, or shall be so  
14 nulled or surrendered.

1 SEC. 2. If any director, officer, or agent of  
2 such bank, shall refuse, without justifiable cause  
3 appear and testify concerning the affairs, transacti  
4 and condition of said bank, when thereto reques  
5 by either of the Commissioners aforesaid, or shal  
6 any way obstruct such Commissioner in the discha  
7 of his duty as prescribed by this act ; or if upon  
8 amination of any such bank, a majority of said C  
9 missioners shall be of opinion, that its condition  
10 such, or that its affairs are conducted in such a m  
11 ner, as to render its further progress in the mana  
12 ment of its concerns hazardous to the public, o  
13 those having funds in its custody, or that said b  
14 has exceeded the powers remaining to it after  
15 charter has been annulled or surrendered as afores  
16 or has failed to comply with all the rules, restricti  
17 and conditions, provided by law for such banks, s  
18 Commissioners may adopt the same proceedings,  
19 the Supreme Court shall exercise the same power  
20 relation to such bank, as are set forth in the fifth s  
21 tion of the act aforesaid.

1 SEC. 3. This act shall take effect from after  
2 passage.

## SENATE....No. 23.

---

prey moves to amend the bill to regulate the use of Rail-roads, as follows, viz. :

striking out the 2d and 4th sections, and inserting the following, viz. :

SEC. 2. Every rail-road corporation, whose road or shall be united by authority of the Legislature, with any other rail-road, shall be required at all reasonable times, and for a reasonable compensation, to convey over their said road, the merchandize cars, and baggage cars, and to convey over the same the passengers, which shall be brought thereto for the purpose, upon the said other rail-road, in such manner that persons desirous of travelling, or transporting baggage and merchandize on the rail-roads so united, shall have the advantage of a continuous line of conveyance and transportation thereon.

SEC. 4. Whenever any rail-road corporations, whose roads are, or shall be united as aforesaid, can mutually agree upon the terms, on which passengers, or baggage and merchandize cars, entered upon any of the said roads, shall be transported upon the same, either of the said corporations may apply in writing to the said Commissioners, setting forth the



8 fact of such disagreement, and requesting them to ad-  
9 just the same ; whereupon, the said Commissioners  
10 shall appoint a suitable time and place of hearing, and  
11 shall give notice in writing, of such appointment to  
12 the parties, fourteen days at least before the time ap-  
13 pointed, and the Commissioners, or a major part of  
14 them, after hearing the parties, shall determine and  
15 establish the terms and conditions on which the pas-  
16 sengers, and baggage cars, and merchandize cars, so  
17 received by either road from the other, shall be trans-  
18 ported, on principles which shall be just and equitable  
19 between the respective parties ; and such determina-  
20 tion of the Commissioners, when communicated in  
21 writing to the parties, shall be binding upon them,  
22 and shall so continue, until changed by mutual agree-  
23 ment between them, or until another adjudication of  
24 the Commissioners upon a further hearing of the par-  
25 ties ; and in case either party, after having been duly  
26 notified as aforesaid, shall neglect to appear before  
27 said Commissioners, they shall have power to proceed  
28 in the absence of such party.











SENATE.....

.....No. 24.

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A N A C T

CONCERNING THE

SINKING FUND

OF THE

EASTERN RAIL-ROAD CORPORATION.

---



**Commonwealth of Massachusetts.**

---

HOUSE OF REPRESENTATIVES, Jan. 21, 1839.

ed, That so much of the Address of the Governor relates to the Sinking Fund of the Western Rail-  
poration, in the hands of the Treasurer of the  
wealth, be referred to a Select Joint Commit-  
Messrs. FAIRBANKS, of *Boston*,  
BLISS, of *Springfield*,  
SHAW, of *Bridgewater*,  
nted.

p for concurrence.

L. S. CUSHING, *Clerk*.

---

IN SENATE, Jan. 22, 1839.  
rred : and

Messrs. MOREY, and CHANDLER are joined.

CHARLES CALHOUN, *Clerk*.

# AMERICAN MEDICAL ASSOCIATION

Volume 1, No. 1, January 1881

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Commonwealth of Massachusetts.

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Year One Thousand Eight Hundred and Thirty-  
Nine.

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## AN ACT

Regarding the Sinking Fund of the Western Rail-road  
Corporation.

*As enacted by the Senate and House of Represen-  
tatives in General Court assembled, and by the authority  
of the people, as follows :*

§ 1. The Treasurer of the Commonwealth,  
and the Treasurer of the Western Rail-road Corpora-  
tion for the time being, shall, ex officio, be Commis-  
sioners of the Sinking Fund of the Western Rail-road  
Corporation.

1     **SEC. 2.** The Governor, if he shall judge  
2 may, at any time hereafter, with the advice of  
3 cil, appoint another Commissioner of said Fund  
4 shall hold his office for five years, and until another  
5 appointed in his stead.

1     **SEC. 3.** The said Commissioners shall have  
2 care and management of all the moneys, funds  
3 securities, at any time belonging to said Sinking  
4 Fund ; but the monies uninvested, and all the securities  
5 ties of said Fund, shall be in the custody of the Treasurer  
6 urer of the Commonwealth.

1     **SEC. 4.** Said Commissioners shall, from time  
2 time, at their discretion, invest the monies on  
3 securely, and so that they shall be productive  
4 the same may be loaned on interest, well secured by  
5 mortgage of real estate, or by pledge of stocks of  
6 United States, or of this State, or of the city of  
7 ton, or of the stocks of any rail-road corporation  
8 this State, whose road is completed, and whose  
9 nal capital has been wholly paid in, and whose  
10 and property are unincumbered. And said Commissioners  
11 sioners shall loan, at least one third of said Fund  
12 security, by mortgage of real estate, to an amount  
13 each case, not exceeding two thirds of the value of  
14 the estate. And they may invest a part of said  
15 in the purchase of any of the stocks aforesaid ;  
16 *provided*, that not more than twenty-five per cent. thereof  
17 shall, at any one time, be so invested in said rail-  
18 stock, and not more than ten per cent. thereof in  
19 stocks of any one of said corporations. And  
20 may sell and transfer any stocks or securities be-  
21 ing to said Fund.

Sec. 5. Said Commissioners shall, annually, in month of January, make a report to the Legislature, setting forth the amount and condition of said fund, and the mode in which it is secured, and the value of the several parts thereof, for the year preceding.



TE.....

.....No. 25.

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# REPORT AND RESOLVES

ON THE

PROPOSED REPEAL BY CONGRESS

OF THE

DUTY ON SALT

AND THE

COUNTY TO FISHERMEN.

---

25

1875

RECEIVED BY THE

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**Commonwealth of Massachusetts.**

---

HOUSE OF REPRESENTATIVES, Jan. 30, 1839.

Resolved, That a Committee be appointed with such as may join, to take into consideration and report on the expediency of instructing our Senators and our Representatives in Congress, to oppose a bill introduced into the Senate of the United States, by James A. Wilson, of Missouri, to repeal the duty on Salt, and to abolish the bounties to Fishermen, as a measure which would result in the utter ruin of the interests of the manufacturers of Salt, and the prostration of the business of commerce in the fisheries : and

Messrs. LORING, of *Hingham*,

CLARK, of *Newburyport*, and

ANDREWS, of *Gloucester*,

appointed the Committee on the part of the House.

Reported for concurrence.

L. S. CUSHING, *Clerk*.

---

IN SENATE, Jan. 31, 1839.

Reported : and

Messrs. KING, and WHITMAN are joined.

CHARLES CALHOUN, *Clerk*.

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## Commonwealth of Massachusetts.

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SENATE, Feb. 12, 1839.

Special Joint Committee of the Legislature, to  
was referred an order directing them "to take  
consideration, and report upon the expediency of  
acting our Senators and requesting our Represen-  
s in Congress to oppose a bill introduced into the  
e of the United States, by Mr. Benton of Mis-  
to repeal the duty on salt, and to abolish the  
ies to fishermen," have attended to the subject,  
ask leave respectfully to

## R E P O R T:

they cannot view without serious regret and ap-  
on the introduction into Congress of a measure  
threatens so much injury to the prosperity and ex-  
of some of the most important, and useful branches  
stry within the Commonwealth. The passage of  
under consideration into a law, would most dis-  
y affect a large class of our industrious and en-  
g citizens. It is well known that Massachusetts  
a well considered and wise policy, encourage the

manufacture of salt, by exempting the capital so invested from taxation. Under this encouragement and the protective duties imposed by Congress on the importation of foreign salt, large amounts of private capital were employed in the business. The exemption from tax has been removed, and the government duties have from time to time so much reduced that the present is only ten cents per bushel of fifty-six pounds. By the act of Congress commonly known as the Compromise Act, the protective duty on salt as well as on many other articles of domestic manufacture, has been considered as suspended and determined till the year 1842. With this confidence and expectation, many of our citizens have been encouraged to continue the manufacture, although the prices which they have obtained for salt have hardly been a compensation for their labor; but, having a large capital invested, they have been unwilling entirely to relinquish the business and make an utter sacrifice of their property.

By the statistical returns of the several branches of industry in Massachusetts, made by order of the Legislature in 1837, it appears, that there were then 743 establishments for the manufacture of salt, that 750,000 bushels were made, and the capital invested was \$753,000. It is represented to the Committee, that the cost of these establishments could not have been less than \$2,000,000. Any immediate repeal or reduction of the duty on foreign salt must compel those who are now engaged in the business to abandon their work, which must result in a most serious and disastrous consequence to them, and might prove to the whole community a great inconvenience. Salt is now worth about thirty cents per bushel; during the last war, when commerce was interrupted, and the armed fleets of a vigilant and powerful

ny were hovering around our coasts, it was sold and even five dollars per bushel; and, if our manufacturers had not in some measure supplied the demand, the article could have hardly been obtained at a moderate price, and great suffering must have ensued. As a measure of public policy, as well as one in which the interests of individuals are deeply concerned, the abandonment of the manufacture of this indispensable article is to be deprecated. It deserves the attention, not of the Legislature only, but of the whole country. Does it become a nation which so proudly boasts of its independence, under any circumstances, to be indebted to foreign countries for a staple article of consumption, which can so easily be produced at home?

On the returns already referred to, it appears, that in 1850 the capital in Massachusetts invested in manufactures was \$54,851,643, the number of persons employed 122, and the value of articles manufactured \$86,625,000. Other lawmakers may be indifferent to the progress of industry, and to the prosperity and happiness of the people, but the legislators of Massachusetts must not forget, that the express letter of the Constitution imposes on them the duty of encouraging manufactures and industry, and they will be false to their high trust if ever they refuse or neglect to defend the interests which secure the welfare of the people.

The energies and the industry of a large portion of our manufacturers have been embarrassed, and, at times, paralyzed, by the frequent agitation in Congress of measures which nearly concern their interests. There can be no settled policy, but a vacillating, uncertain, and hasty legislation, which at one session may promote and encourage a particular branch of industry, and at the next, leave it naked and exposed to wild hazard or



overwhelming ruin. Such wavering legislation dages enterprise, and ill accords with the character wise and paternal government.

Massachusetts has a deeper interest in this than most other States of the Union ; but in her tion to untimely legislation, she does not stand alone the Commonwealth of Virginia, the House of De has lately, by a vote of yeas eighty-three, nays thirty resolved, that the compromise act relating to the should be held sacred and inviolate. The repeal duty on salt would be a violation of that solemn co against which it appears to the Committee that the and interest of Massachusetts demand that she most earnestly protest.

The Committee are of opinion, that the repeal laws which give a bounty to fishing vessels and t employed in them, would be unjust, and impolitic. foreign nations have given bounties much more con ble than the United States government has ever and they have been satisfied that the fisheries can maintained without the bounty. Should the bou withdrawn, our fishermen cannot compete with t foreign nations, and it is even questionable wheth should not be dependent on foreigners for a suppl the years 1837 and 1838, many of the vessels c take fish enough to pay the men the rate of wages ed on board merchant vessels, and many of the o before they could obtain crews, were obliged to gu to the men that the shares of fish, with the oil and ty, should be equal in amount to the wages paid on merchant vessels and coasters. In 1837, there we employed in this State in the cod and mackerel fis 1290 vessels, manned by 11,146 persons, and t taken was valued at \$3,208,559 ; about one half o

were engaged in the cod fishery, and the number probably since increased. The men employed in business are generally of moderate property, and the removal of the bounty would in many instances diminish their employment, and reduce them from a comfortable competency to very straitened circumstances; business is not in the hands of wealthy men or capitalists.

The benefits of the bounty are not confined to the immediate receipt of it, but by making the supply of fish more regular and abundant, they are felt throughout the community. The fishermen are the class who need, and who deserve the encouragement of the government. They do not interfere with the honest labors with one another; they almost create a market for their manufacture; their harvest field could be applied to any other profitable use, and the liberal supplies from her vast storehouses are not diminishing her treasures.

The repeal of the bounty would depress the value of vessels, storehouses and all other property connected with the business, and would deprive of employment many skillful and industrious men; it would take from the market a very common and convenient article of subsistence which may now be obtained at moderate prices; to the poorer classes of society it would severely distress, it could do no harm, and the saving to the public treasury would be considerable as hardly to deserve notice.

The importance of the fisheries, and the necessity of encouraging them, are not confined to Massachusetts; in nearly every part of the Union which is not benefited by them, and the facilities of transportation by vessels and rail-roads, are rapidly extending their advantages.

But the fisheries demand the encouragement of government, not so much because they afford employment to a class of hardy and deserving men, and furnish abundant and cheap subsistence, as because they are a school for seamen, a school where skilful and adventurous men are trained up for service in merchant vessels and in the navy. And these *free schools* have become more indispensable since steam navigation has displaced the sailing vessels which formerly sailed upon our coasts and rivers.

When hostilities commenced with Great Britain it was known that many of these bold and hardy men were driven from their peaceful employment, and that thousands enlisted in vessels of war on the lakes and on the ocean, and by their activity and bravery contributed to the success of the contest, and to the return of an honorable peace. The fishermen of Massachusetts helped to gild with their perishable fame the brightest pages in the naval history of the country. The country should not forget its obligation for past services; it should not forget that it may yet have occasion to ask similar services.

The Committee are of opinion, that the repeal of the duty on salt and of the bounty to fishermen would be injurious, if not fatal to some of the cherished and important interests of the Commonwealth, and that all proper measures should be taken to prevent the repeal. In accordance with these views, they unanimously recommend the passage of the accompanying resolves.

DANIEL P. KING,  
JARED WHITMAN,  
THOMAS LORING,  
SAMUEL L. ANDREWS

Com

Commonwealth of Massachusetts.

---

Year One Thousand Eight Hundred and Thirty-Nine.

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## RESOLVES

Regarding the Duty on Salt and the Bounty to Fishermen.

*Resolved*, That the proposed repeal of the duty on salt and the bounty to fishing vessels and the men employed in them, would be a direct violation of the faith of the nation as pledged by the act of Congress, commonly known as the Compromise Act; and, that such repeal would seriously injure some of the most important branches of industry in this Commonwealth, and would cause distress and distress a large portion of our most dependent citizens.

*Resolved*, That the Senators of this Commonwealth, in Council, be instructed, and the Representatives be requested, to use their influence to oppose the passage into



a law of any bill, the object of which is to repeal or reduce the duty on salt, or the bounty to fishing vessels and the men employed in them.

*Resolved*, That His Excellency the Governor be requested to transmit copies of these Resolves to the Senators and Representatives of the Commonwealth in Congress.



TE.....

.....No. 26.

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# REPORT

ON THE

UTIONS OF THE STATE OF GEORGIA,

CONCERNING

UGITIVES FROM JUSTICE.

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**Commonwealth of Massachusetts.**

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IN SENATE, Jan. 22, 1839.

*Ordered*, That Messrs. WILLARD and UPTON, with such as the House of Representatives may join, be a Committee to consider and report upon certain resolutions passed by the Legislature of Georgia, in the month of December, A. D. 1837, relating to "the refusal of the Executive of the State of Maine, to deliver up to the Executive authority of Georgia, certain fugitives from justice,"—which resolutions have recently been communicated to the Legislature of Massachusetts, by request of the Government of Georgia.

Sent down for concurrence.

CHARLES CALHOUN, *Clerk*.

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HOUSE OF REPRESENTATIVES, Jan. 22, 1839.

Concurred : and the following members are appointed  
viz. :       Messrs. BRIMMER, of *Boston*,  
              STICKNEY, of *Lynn*,  
              TORREY, of *Abington*,

L. S. CUSHING, *Clerk*.

**Commonwealth of Massachusetts.**

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IN SENATE, Feb. 12, 1839.

Committee to whom were referred the resolutions of the Legislature of the State of Georgia, on the subject of the refusal of the Executive of the State of Georgia, to deliver up to the Executive authority of this Commonwealth, certain fugitives from justice, which resolutions have been communicated to the General Court, by His Excellency the Governor, at the request of the Senate of Georgia,

**R E P O R T:**

the said resolutions affirm,

-That the refusal of the Executive of Maine, to deliver up the persons named, is clearly and directly in violation of the plain letter of the Constitution of the United States.

-That when the common rights and interests secured by the confederacy, cease to be attained, in consequence of the faithlessness of any member thereof, to the constitutional engagement, each state is absolved from its obligations to the common compact, and that it becomes its right and duty, to provide for its own people in the most effectual way.

#### 4 FUGITIVES FROM JUSTICE. [Feb.

3d.—That on a certain contingency, named in the resolutions, a second demand shall be made by the Executive of Georgia, on the Executive of Maine, for the sons of the fugitives.

4th.—That in case of the refusal of the Executive of Maine, to comply with the second demand, the Executive of Georgia, shall transmit copies of the resolutions to the Executive of each State, and that, if the Legislature of Maine, at its session next after the forwarding of the resolutions, shall neglect to redress the grievance, the Executive of Georgia, shall make proclamation to that effect, and call for a convention to be chosen by the people of the Commonwealth of Georgia, to consider the course to be pursued by her future policy, and to provide all necessary safeguards for the protection of the rights of her people.

The Committee are of opinion, that the Legislature are not now called upon to affirm or deny any thing contained in the resolutions, whether as a communication of facts, or as declarative of constitutional principles, or to express any opinions, or take any measures in relation to the prospective acts of the State of Georgia,—and it is therefore inexpedient to act any farther thereon.

By order of the Committee,

SIDNEY WILLARD, *Chairman*

TE.....

.....No. 27.

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# R E P O R T

OF THE

TION OF AMHERST COLLEGE.

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## P E T I T I O N .

*Honorable Senate and the House of Representatives  
of the Commonwealth of Massachusetts, in Gen-  
eral Court assembled :*

Petition of the Trustees of Amherst College re-  
presents :

The collegiate institution which was established  
first in 1821, was incorporated as a college in  
with about one hundred and thirty-six students :  
At that time, the number has greatly increased ;  
and this increase in the number of students, the  
for buildings for their accommodation, for addi-  
tional structures, for additions to the library, and appa-  
ratus in the various departments has proportionally in-

The wants of the college have hitherto been met  
in great measure by the liberality of the benevolent public ; and  
the efforts of the college have been repeatedly called  
upon to contribute to its necessities :

Additional means, to a considerable amount, are  
urgently necessary to enable your petitioners to  
complete the college building : to supply deficiencies in  
the apparatus ; to render the various apparatus more perfect  
for their purposes.

Petitioners further represent, that they have be-  
fore made repeated applications to the Legislature for

pecuniary aid, but have been refused it, on grounds were satisfactory to the majority ; and they have received any aid whatever from the State treasury.

And in renewing their application for this purpose they rely upon the disposition of the General Court regard that provision of our State Constitution, makes it the "duty of legislatures, in all future periods of the Commonwealth, to cherish the institutions of literature and the sciences, and all seminaries of the kind that they will carry out the principle which has induced all former Legislatures to make munificent donations to the University, which has ever been the object of the patronage and the honor of the Commonwealth—this has induced former legislatures to make munificent donations to the funds of Williams College, and to Bowdoin College, while Maine was a part of this State—and to make endowments to almost every incorporated academy within the Commonwealth.

The Legislature have reserved to themselves, by the act incorporating the college, "the right to alter, amend, annul or restrain," the powers vested, by the act, in the trustees—the right to appoint, and forever have the right of re-appointment, as vacancies in the number shall occur, out of seventeen of the said trustees, to appoint visitors of the college, and retain in their own hands a controlling power over the acts of the trustees.

The annual increase in the number of students, and the numbers of all the other New England colleges, and the increase, renders it manifest that a college was not in the portion of the Commonwealth in which this was situated, and that it must be sustained.

And the petitioners respectfully urge, that its want of respectable standing among the other New England



ken in connection with the ample resources of  
ury, entitle them to the favorable consideration  
egislature ; and it is but equal justice, that the  
which has hitherto sustained itself, while it is  
its charter peculiarly within the control of the  
ent, should share with other kindred institutions  
unty which all others have received at its hands.  
fore the petitioners earnestly ask, that you will  
em such pecuniary aid as their necessities de-  
d the state of the treasury enables you to give.

As in duty bound will ever pray,

In behalf of the Trustees,

H. HUMPHREY, *President.*

st, Dec. 1838.

HOUSE OF REPRESENTATIVES, Jan. 15, 18

Referred to Messrs. DUNCAN, of *Haverhill*,  
BINNEY, of *Boston*,  
PARK, of *Groton*,  
SALISBURY, of *Worcester*,  
PHELPS, of *Hadley*,  
BURT, of *Longmeadow*,  
ALLEN, of *Northfield*,  
RUSSELL, of *Pittsfield*,  
WILLIAMS, of *Roxbury*,  
SHEPARD, of *Mansfield*,  
HOWARD, of *W. Bridgewater*,  
BARBER, of *Orleans*,  
DAVIS, of *Edgartown*,  
MARCY, of *Nantucket*,

with such as the Senate may join.

Sent up for concurrence.

L. S. CUSHING, *Clk*

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SENATE, Jan. 16, 18

Concurred : and Messrs. GOODRICH, QUINCY,  
LARD, KING, HANCOCK, BOIES and BROWN, are join

Attest,

CHARLES CALHOUN, *Cle*



**Commonwealth of Massachusetts**

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The Joint Select Committee, to whom was referred  
the petition of the Trustees of Amherst College, submit  
the following report.

By order of the Committee,

S. G. GOODRICH

## R E P O R T .

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History of this college is generally known, from the of its establishment and in consequence of dis- excited by its several applications for the aid of e. It will be only necessary, therefore, to pre- ew prominent facts on the present occasion.

First College grew out of a project for the re- F Williams College, which was started about the 15. Chancellor Kent of New York visited vari- ces for the new location, and Northampton was on. The requisite sum for completing the plan, r, was not subscribed by the town of Northampton, scheme failed. At Amherst, in the mean time, of enterprise had been excited, and \$50,000 being ed, an institution, with studies similar to those of llege, was begun there in 1821. In 1822, it ap- a charter, which was refused ; but, after repeated ions, a cautious and restricted charter, giving the ure powers possessed over the government of no llege in the State, was granted to this institution. ning under inauspicious circumstances, and, for ontending with many obstacles, the college has d to advance, till it has become one of the most e and efficient seminaries in New England. In began with 56 pupils ; in 1837, it numbered 259,



which was even more than were then in the University of Cambridge.

This brief recital would seem to afford a sufficient answer to most of the objections which have been urged against Amherst College. Time and experience have laid at rest many of the doubts and fears, real or imaginary, which it once excited ; and if the institution were now tried upon the simple question of its past usefulness and present prospect of continued advantage to the State, it would fall behind no other seminary in the Commonwealth in its claims to encouragement and support.

And is not this the only true ground upon which the case should be tried ? It has indeed been urged on the one hand, that Cambridge college has, at various times, received grants to the amount of half a million of dollars, and, on the other, it has been said, that a special provision is found in the charter of Amherst College, that no grant of the said charter shall imply no obligation to bestow upon it the bounty of the State. But, in the opinion of the Committee, these facts do not affect the question at issue. The money granted to Cambridge was given as a disinterested and gracious boon to that college, but only as a means of benefiting the State, by promoting the cause of education. No obligation, therefore, to grant any other college, flows from these grants to Cambridge. The only way in which they can properly affect the present question is, as evidence of the settled policy of the State in aiding education by giving pecuniary aid to literary institutions. To this end, the fact is worthy of consideration to no other. Nor on the other hand is the reservation in the charter of Amherst, above mentioned, to be used as an objection to the present prayer. The petition must, therefore, stand solely on the proof brought by the petitioners, on

that will accrue to the State, by sustaining Amherst College, and thereby sustaining and advancing the education.

In view the Committee deem it wholly unnecessary to review the history of this institution, or the topics to which time and events have given an interpretation. If it were a question, whether a college at Amherst were needed, it is so no longer. An opinion is there, and, in the face of opposition, it has stood strongly among the people, thus putting to rest the mooted question of its utility and necessity.

Inquiry as to the usefulness of our colleges in this State is not one that is submitted to the Committee. It is settled, and wisely settled, by the Constitution of the Commonwealth. Education is the great lever of human improvement—the magic wand which converts the savage into the civilized man. But this is a discovery made by the illiterate, or felt by the ignorant. Who, shall be the missionaries of knowledge—to diffuse its benefits, and spread abroad its benefits? It has been said that literary institutions of a high character can furnish a supply of those enlightened men, who themselves armed with truth, devote their lives, with vigor and exertion to the kindling of it in the breasts of their fellow-men. Ignorance is the natural enemy of knowledge, and darkness ever tends to swallow up light. The cause of civilization, great and glorious as it is, must fight its way against the prejudices and dislikes of the narrow-minded and unenlightened. To sustain this warfare and to be victorious in the contest, and redeem society from the darkness of moral and intellectual night, it is necessary to exert, year by year, those whose hearts and minds have been enlightened and elevated by drinking

deep at the fountains of truth. Our colleges are designed to be such fountains, and as such have received the sanction of our fathers—as such, have come down to us consecrated by their example, and sheltered by the banner of the Constitution.

The position of the question before the Committee seems, then, to be practically this: A literary institution—such as the Constitution commends to the attention of the Legislature,—one that has been tried and found useful, one that experience has demonstrated to be necessary to the support of the cause of education in this State,—asks for aid, such as has been given to similar institutions; and shall this be granted?

But one preliminary inquiry seems necessary, before answering this question in the affirmative, and that is, will the aid prayed for by the memorialists, give efficiency to the action of Amherst College? There was a time when such an inquiry as this would have been deemed impertinent; for money bestowed on a college was once supposed to be of course a benefit. But later experience has shown, that ample endowments may rather hinder than promote the success of a literary institution, by withdrawing the necessity of vigor and vigilance on the part of its managers, to sustain it. The present case, however, comes not within the range of this remark, for the grant desired is not for the purpose of making the college rich, but only to relieve its managers from existing embarrassments, and to enable them to give full scope to their means of usefulness.

On a strict examination, it is found by the trustees of the institution, that the actual receipts of the college fall short of their expenditures, by an annual amount of from 600 to 1,000 dollars, including interest accruing on debt



for buildings, library, and apparatus. They are, running in debt, and year by year, sinking into of exhaustion. At the same time, they need ample accommodations for students, and, as they are in exigent need of additions to their library and philosophical apparatus. Their present buildings are fastidious for the want of repairs, which their present resources will not enable them to make. Beside this, in the most rigid economy, the institution is involved in debt of about 12,000 dollars, and which, in the present state of things, must inevitably increase.

The facts, showing that in order to keep up the college at its former pitch of effort, some aid is indispensable. To answer the question just suggested, and lead to the reference that, in view of the interest of the State, and in the interests of education—in view, also, of public policy, cherished and enforced, alike by all former Governors in this Commonwealth—it is the duty of the Legislature, to bestow aid upon this institution, according to the prayer of the memorialists, whenever the State of the public treasury shall justify it. The Committee believe that, at the present time, however, the state of the treasury does not justify a grant to the college as prayed for, and therefore recommend a reference of the subject to the next Legislature.

By order of the Committee.

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HOUSE OF REPRESENTATIVES, Feb. 11, 1839.  
Adopted. Sent up for concurrence.

L. S. CUSHING, *Clerk.*







# SENATE....No. 28.

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Reported by the Committee on Mercantile Affairs and Insurance.]

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Commonwealth of Massachusetts.

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Year One Thousand Eight Hundred and 'Thirty-  
Nine.

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## AN ACT

in relation to an Act to establish the Aqueduct Corpora-  
tion in Boston.

*as enacted by the Senate and House of Represen-  
tatives in General Court assembled, and by the authority  
of the same, as follows :*

SEC. 1. The Aqueduct Corporation are hereby  
authorized and empowered, to conduct into Jamaica  
field, in Roxbury, or into any reservoir adjacent  
thereto, or into any reservoir or reservoirs, within the  
limits of the towns of Brookline and Brighton, or  
any part of them, and from thence into the city of Bos-  
ton, any stream or streams, pond or ponds, or other

## 2      **AQUEDUCT CORPORATION.** [Feb.

8 sources of water, to which said corporation may  
9 acquire rights, by purchase or otherwise, and, for  
10 purposes, may erect and maintain a dam or  
11 upon and across any stream, rivulet, or run of water  
12 not navigable, and may lay their pipes or conduits  
13 through or across any highway between said Jaxson  
14 Pond, or said reservoir or reservoirs, and the points  
15 of supply, and also, between said pond or ponds  
16 reservoirs, and any point or points in the line of  
17 present Aqueduct, or in any other conduit which  
18 said corporation may lay down; and also, by sub-  
19 terranean pipes or open conduits, may conduct the water  
20 through the land of any individuals or corporations  
21 between the same points, with the same privileges  
22 and subject to the same payments, penalties, re-  
23 spects and conditions, as to said dam or dams and  
24 provided in, and by the 116th chapter of the Revised  
25 Statutes, concerning mill-dams; and as to said  
26 pipes or conduits, or the laying of the same, as are pro-  
27 vided in, and by the 56th and 57th sections of the  
28 chapter of the Revised Statutes, concerning rail-

1      **SEC. 2.** The said corporation may increase  
2 shares to a number not exceeding five hundred  
3 the capital stock shall not exceed five hundred  
4 thousand dollars.

1      **SEC. 3.** The said corporation, may hereafter  
2 purchase and hold real estate, to an amount not ex-  
3 ceeding fifty thousand dollars, in addition to what  
4 are now entitled to hold.



## SENATE....No. 29.

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TREASURY OFFICE, *Feb. 14th*, 1839.

bedience to an order of the twelfth instant, I submit to the Senate, a statement showing the amount of payments made from the Treasury, from January 1st, to January 1st, 1839, on account of expenses incurred in prosecuting the Massachusetts Claim against the Federal Government; also, the time when, and the persons to whom such payments were made. But this statement does not possess the means of "specifying particular items of said expenses and payments," conforming to the requisition of the order.

Very respectfully,

Your obedient servant,

DAVID WILDER, *Treasurer.*

MYRON LAWRENCE,  
*President of the Senate.*

*"A STATEMENT of all expenses incurred and paid out of the treasury, from the 1st day of January, 1823, to the 1st day of January, 1839, in prosecuting the Massachusetts Claim against the Government for expenses incurred during the last war," prepared in compliance with an Order of the Senate, dated February 12, 1839."*

1823	
June 14,	Warrant in favor George Sullivan and Joseph H. Pierce, . . . . .
July 7,	Do. do. Same persons, . . . . .
1824	
Feb. 21,	Do. do. do. . . . .
June 12,	Do. do. George Sullivan, . . . . .
" 12,	Do. do. do. . . . .
" 12,	Do. do. Joseph H. Pierce, . . . . .
Aug. 28,	Do. do. Gov. Eustis, "to enable him to defray all such contingent expenses as he may deem necessary in the further management of the Claim on the United States, &c." . . . . .
1825	
March 4,	Payment to Joseph H. Pierce, allowed by the Committee on Accounts, . . . . .
July 2,	Warrant in favor George Sullivan, . . . . .
Sept. 3,	Do. do. do. . . . .
1826	
July 10,	Do. to pay for copying certain papers in Washington, . . . . .
1828	
Jan. 24,	Do. in favor James Appleton, for his expenses, &c. in procuring testimony concerning the Claim, . . . . .
1830	
Sept. 15,	Do. in favor of John Davis, . . . . .
1831	
July 11,	Do. do. do. . . . .
1832	
Feb. 13,	Do. do. Charles P. Davis, . . . . .
1834	
Jan. 6,	Do. do. John Davis, . . . . .



## STATEMENT—Continued.

Warrant in favor of Isaac C. Bates,	\$1000 00
Do. do. Alford Richardson, "being his account of services in procuring evidence respecting the items of the miscellaneous class of the Claim of Massachusetts against the United States,"	27 00
Warrant in favor Governor of Maine,	1500 00
Do. do. Isaac C. Bates,	758 00
Do. do. Samuel H. Walley, Jr. for Isaac C. Bates,	1242 00
	<hr/> \$18,385 72

Y 14, 1830.

DAVID WILDER, *Treasurer.*







## SENATE.....No. 30.

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by a Special Joint Committee, consisting of Messrs. Morey and  
k, of the Senate, and Messrs. Atkins, of Provincetown, Harris, of  
and Chaddock, of New Bedford, of the House.

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**Commonwealth of Massachusetts.**

Year One Thousand Eight Hundred and Thirty-  
Nine.

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### AN ACT

to establish Regulations concerning the Harbor of Bos-  
ton.

*Enacted by the Senate and House of Represen-  
tatives in General Court assembled, and by the authority  
of the same, as follows :*

SEC. 1. No vessel shall anchor in the harbor of  
Boston, on the inner side of the line described in the  
second section of an act, entitled "an act to preserve  
the harbor of Boston, and to prevent encroachments  
therein," passed the nineteenth day of April, in the  
year eighteen hundred and thirty-seven, nor within  
one hundred feet of said line on the outer side thereof,

8 unless for the purpose of hauling in, as soon as  
9 cable, to some wharf in said harbor, or unless  
10 pelled so to do by reason of stress of weather, or  
11 voidable casualty; and whenever any vessel  
12 anchor within the said space of five hundred f  
13 in the space on the inner side of said line, for th  
14 pose or reason aforesaid, the master, command  
15 owners thereof, shall cause such vessel, as se  
16 practicable, to be hauled in to some wharf, or m  
17 ed to a proper place of anchorage: *Provided*  
18 any vessel may anchor within said prohibited s  
19 and may remain at anchor therein, by obtain  
20 written permit for that purpose, from the harbo  
21 ter of the port of Boston, who may be appoin  
22 hereinafter mentioned; and for every offence a  
23 any of the foregoing provisions, the master, com  
24 er, or owners of such vessel, or either of them  
25 be subject to a penalty not exceeding twent  
26 dollars.

1 SEC. 2. The master, commander or own  
2 every vessel, shall, as soon as practicable, after l  
3 hauled to the end of any wharf, that extends  
4 channel in said harbor, cause her lower yards  
5 cockbilled, and her jibboom to be rigged in, s  
6 the said jibboom may not annoy any other ves  
7 vessels going in or out of the adjoining docks, an  
8 lower yards and jibboom shall be kept so arra  
9 while such vessel lies at the end of the wh  
10 aforesaid, and until she is preparing immediat  
11 leave her birth:—and for every offence agains  
12 of the provisions in this section, the master,  
13 mander or owners, or either of them, of such v  
14 shall be subject to a penalty, not exceeding  
15 dollars.



**SEC. 3.** No person shall throw, or deposite in said harbor, or any part thereof, any stones, gravel, ballast, cinders, ashes, dirt, mud, or other substances, which may, in any respect, tend to injure the navigation thereof, unless permission in writing be first obtained from the Mayor and Aldermen of said city, or from said harbor master: and whoever shall offend against the provisions of this section, shall be subject to a penalty, not exceeding fifty dollars.

**SEC. 4.** The city council of the city of Boston, may, if they shall deem it expedient, annually appoint by concurrent ballot in each board, a harbor master for the port of Boston, who shall hold his office for one year and until another shall be appointed in his place, or until he shall be removed by said city council; and, before entering upon his office, he shall give bond to the said city with sufficient sureties, to the satisfaction of the Mayor and Aldermen, in the penal sum of two thousand dollars, conditioned for the faithful discharge of the duties of said office; and in case of the sickness or disability of the said harbor master, the city council may appoint a deputy, subject to the approval of said Mayor and Aldermen, to perform his duties during such sickness or disability; and said harbor master shall be allowed and paid quarterly out of the city treasury such salary for his services, as said city council shall establish.

**SEC. 5.** It shall be the duty of the said harbor master to enforce the execution of the several provisions of this act, and of all other laws of the Commonwealth, relating in any way to said harbor, and of all laws of said city, not repugnant thereto, and to prosecute all violations of such laws and ordinances,

7 and to take all lawful measures to prevent the  
8 of any act, by which the flow of the tides, or the  
9 direction or depth of the current, into, out  
10 through the said harbor, may, in any degree, be  
11 riously affected.

1 SEC. 6. All said several penalties may be re-  
2 ed by complaint before the police court of said city,  
3 by indictment, for the use of said city, where  
4 complaint shall be made by said harbor master,  
5 when the complaint shall be made by any other  
6 son, one half shall be recovered for the use of  
7 city and the other half for the use of the complainant.

1 SEC. 7. The master, commander, or owner of  
2 any vessel, who shall violate either of the provisions  
3 of the first and second sections of this act, shall be  
4 no remedy for any damage happening to such vessel  
5 by reason of such violation; and they or either of  
6 them shall be liable for all damages happening to  
7 other vessel or vessels in consequence of such viola-  
8 tion.



ATE.....

....No. 31.

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# ANNUAL REPORTS

OF THE

## L-ROAD CORPORATIONS

IN THE

STATE OF MASSACHUSETTS,

FOR 1838.

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**Boston:**

DUTTON AND WENTWORTH, STATE PRINTERS.

.....  
1839.



# Commonwealth of Massachusetts.

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SENATE, February 15, 1839.

Joint Standing Committee on Rail-ways and Canals, to whom  
mitted the Annual Reports of the Western, Boston and Low-  
on and Providence, Boston and Worcester, Norwich and Wor-  
the Eastern, the Nashua and Lowell, Andover and Haverhill,  
st Stockbridge, the Taunton Branch, and the Charlestown  
Corporations, and that part of the Report of the Seekonk  
Corporation, which relates to their receipts and expenditures,  
that the same be printed for the use of the Legislature,

By order of the Committee,

L. CHILD, *Chairman.*

SENATE, February 15, 1839.

pted.

Sent down for concurrence,

CHARLES CALHOUN, *Clerk.*

HOUSE OF REPRESENTATIVES, February 15, 1839.

curred.

L. S. CUSHING, *Clerk.*



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THIRD ANNUAL REPORT  
OF THE  
DOVER AND HAVERHILL  
RAIL-ROAD CORPORATION.

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*Honorable Legislature of the Commonwealth of Massachusetts :*

Directors of the Andover and Haverhill Rail-road Corporation do hereby make their Fourth Annual Report, of their acts and doings, receipts and expenditures, under their act of incorporation.

In their last annual report, it was stated, that the road had been completed to the bank of Merrimack river, in Bradford, opposite to Haverhill, and opened for use.

The extension of the road from this place to the line of the State, at the westerly of the three routes, authorized by the Legislature, was adopted by the directors.

This route crosses the Merrimack, about two hundred feet to the west of the present depot in Bradford, thence along the bank of Little Merrimack to its junction with the Boston and Maine Rail-road, at the line of the State, being about three miles in length.

The grading of the first division of this last mentioned road, from the line of the State to Exeter, was commenced in October last, about five miles, and the work is already completed, and it is understood, that the remaining portion of this division will be finished without delay.

At the meeting of the stockholders of the Andover and Haverhill Rail-road, held the seventh instant, they voted to request the directors to proceed immediately in the erection of a bridge across Merrimack river, and in the construction of the remaining part of the road to the Hampshire line.

To build the Merrimack River Bridge, the necessary depot buildings at Bradford, and to finish the road to the line of the State, will require an addition to the present capital, of one hundred thousand dollars.



The Andover and Haverhill Rail-road Corporation have contracted with the Boston and Maine Rail-road, to do and perform all the transportation of persons and freight upon and over said rail-road completed to Exeter, on such terms and conditions as appear in the contract, which is hereto appended.

It appears from the books and accounts of the treasurer, on the 1st of January instant, that the total amount of capital paid in, was one hundred and seventy-five thousand six hundred and forty-one dollars and eighty-five cents.

The total amount of expenditures the last year, was ninety-seven thousand eight hundred and forty dollars and ninety-one cents.

For the repairs of the road, five thousand one hundred and eighty dollars and eighteen cents.

For repairs of engines and cars, one thousand eight hundred and forty-one dollars and seventy-eight cents.

Interest paid on State scrip, four thousand five hundred and thirty-three dollars and fifty-three cents.

All other miscellaneous expenses, including the toll paid to the State Road, thirty-four thousand six hundred sixty-one dollars and eighty cents.

Also for unsettled accounts of the last year, for the construction of the road and unliquidated land damages, fifty-five thousand one hundred and eighty-five dollars and ninety-three cents.

The amount received the last year, for the transportation of passengers, was forty-two thousand nine hundred and fifty-two dollars and seventy-nine cents. For freight, twelve thousand six hundred and sixty-four dollars. Other miscellaneous receipts, one thousand one hundred and eighty dollars and five cents.

The amount received for stock was, forty-two thousand one hundred and eighty-five dollars and ninety-one cents. For State scrip, one thousand dollars.

The amount divided the last year, was nine thousand dollars and three per cent. on three thousand shares, paid in October last.

All which is respectfully submitted.

HOBART CLARK,  
EN. SILSBY,  
THOMAS WEST,  
AMOS ABBOTT,  
SAMUEL A. WALKER,

ANDOVER, *January 29, 1839.*

*Directors*



## COMMONWEALTH OF MASSACHUSETTS.

ss.

*January 29, 1839.*

n, Hobart Clark, Enoch Silsby, Thomas West, Amos Abbott,  
 amuel A. Walker, appeared, and severally made oath, that the  
 ent aforesaid was true, according to the best of their knowledge  
 lief.

Before me,

**SAMUEL MERRILL, *Justice of the Peace.***

a meeting of the Directors of the Andover and Haverhill Rail-  
 Corporation, held September 7th, A. D., 1838,  
 ed, That the agreement with the Boston and Maine Rail-road of  
 ate, be accepted, and that Hobart Clark, Esq., President of the  
 ration, and one of the directors, be authorized to sign the same.  
 d agreement is in the following words, to wit:

ereas, at a meeting of the stockholders of the Andover and Ha-  
 Rail-road Corporation, holden at Brown's Tavern, in Haverhill,  
 e twenty-fifth day of August, in the year of our Lord, one thou-  
 eight hundred and thirty-eight, specially called for the purpose, it  
 oted, that the directors of the Andover and Haverhill Rail-road  
 ration be authorized to contract with the Boston and Maine  
 road, to transport all the passengers and freight over said Boston  
 Maine Rail-road, for a term not exceeding five years from and after  
 road is completed to Exeter. Provided the same can be done, by  
 g said Boston and Maine Rail-road a sum not exceeding six per  
 interest, per annum, on a sum not exceeding two hundred thou-  
 dollars.

d whereas, at a meeting of the stockholders of the Boston and Maine  
 road, holden at Tucker's Tavern, in Plaistow, on the fifth day  
 ptember, in the year of our Lord one thousand eight hundred and  
 eight, it was voted,—That the directors of the Boston and Maine  
 road be and hereby are authorized to make such contract with the  
 ors of the Andover and Haverhill Rail-road Corporation, for the  
 ortation of passengers and freight, upon such terms and condi-

tions as they shall deem expedient, or the interests of the corporation shall require.

Now, therefore, this agreement made and entered into by the directors of the Andover and Haverhill Rail-road Corporation, of the one part, and the directors of the Boston and Maine Rail-road, of the other part, witnesseth :

That when said Boston and Maine Rail-road shall be fully completed, in all respects, and ready to be opened for use with convenient depots, from the line of the Commonwealth of Massachusetts, at Exeter, to some convenient place in the town of Exeter,—in consideration of the sum hereinafter mentioned,—the directors of the Andover and Haverhill Rail-road Corporation shall take and hold full possession thereof for and during the term of five years from the time of completion, as aforesaid. That the said Andover and Haverhill Rail-road Corporation, shall pay, for the use of said Boston and Maine Rail-road, the sum of twelve thousand dollars annually, after taking possession of the same as aforesaid, to the treasurer of said corporation, and keep the same in good running repair during the term aforesaid, and give possession of said rail-road to the directors of the Boston and Maine Rail-road at the expiration of said term, in such repair, except necessary wear and decay of materials only excepted.

It is agreed, that the rail-road shall be constructed in the same manner and style, and shall be laid with the same kind of iron rails as the Andover and Haverhill Rail-road.

It is farther agreed, by the parties aforesaid, that in case of failure of any part of the construction of the Boston and Maine Rail-road, or of defect in the original construction of the road, the same shall be repaired at the expense of that corporation.

Provided, nevertheless, if the said road shall be constructed beyond the town beyond Exeter, the above contract is to be void.

Dated at Andover, the seventh day of September, A. D., 183

HOBART CLARK

*Director of B. & M. Rail-road,* J. BURLEY,

*Director of A. & H. Rail-road,* ENOCH SILSBY

a meeting of the directors of the Andover and Haverhill Rail-Corporation, Sept. 15, 1838, it was voted,—That the attested of the vote of the directors of the Boston and Maine Rail-road be on record, to wit : “ At a meeting of the directors of the Boston Maine Rail-road, held at the Granite Bank, Sept. 8th, 1838, it was d,—That the agreement with the Andover and Haverhill Rail-road corporation dated Sept. 7th, 1838, be accepted,—and that Hobart k, Esq., President of the corporation, and one of the directors be authorized to sign the same.

A true copy of record,      Attest :

CHARLES CONNOR, *Clerk.*

A true copy of record,      Attest :

JOHN FLINT,  
*Clerk of Andover and Haverill R. R. Cor.*



# SEVENTH ANNUAL REPORT

OF THE

# BOSTON AND LOWELL

# RAIL-ROAD CORPORATION.

*Honorable the Legislature of the Commonwealth of Massachusetts :*

Directors of the Boston and Lowell Rail-road Corporation do hereby make their Seventh Annual Report of their acts and doings, receipts and expenditures, under their act of incorporation.

Total amount of capital paid in, is	\$1,500,000 00
-------------------------------------	----------------

Amount expended the past year, exclusive of amount paid and charged to the cost of the road, is—	
Repairs on the road, including \$4,295 90 for extra repairs and improvements, and removing snow,	15,734 90
Repairs on engines and cars,	10,945 77
Fuel, oil, salaries and other miscellaneous expenses,	48,917 27

**\$75,597 94**

Amount received the past year, is,—

Transporting passengers between Boston and Lowell	
---	--

\$94,569 10

Transporting merchandise “ “ “	76,236 47
Transporting United States Mail,	1,000 00

Transporting passengers for the Andover and Haverhill Rail-road Corporation over our road,	14,514 21
--	-----------

Transporting merchandise for the Andover and Haverhill Rail-road Corporation over our road,	3,492 55
---	----------



For transporting passengers on the Nashua and Lowell Rail-road as per agreement with that corporation,

---

\$19

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The amount divided during the past year is \$90,000, being 4 per cent. on the capital paid in—two dividends of three per cent.

Since the last annual report, in which an account was given of the cost of the road up to that time, there has been no change towards the completion of the road, as follows:

For five miles second track, now complete from Boston to Wilmington, fifteen miles,

\$2

For land and buildings needed for merchandise at the Boston depot,

2

For a locomotive engine, and ten new merchandise cars,

“ sundry miscellaneous expenses, \$1,881 38

“ superintendence, 2,400 00

“ land damages, &c., 321 00

“ rail iron, 689 18

“ interest account, 708 33

---

\$6

Whole amount expended on cost of the road, and appurtenances, at the time of the last annual report,

1,500

Whole cost of the road to Nov. 30, 1838,

\$1,570

The amount of debt due from the corporation,

\$5

The balance of profits on hand, from which a dividend of four per cent., or \$60,000, is declared, and will be paid on 11th Feb. next, is

12

\$18

The corporation have land on hand, for sale, cost, as appears by the books,

\$48,635 58

Cash balance on hand,

23,339 27

Notes and debts due the corporation,

36,511 87

---

106

Balance,

\$7

corporation having accepted the act of our Legislature of April 3, it is now contemplated to increase our capital stock in a sum to pay off our debts, and for such other expenditures on the may be required.

which is respectfully submitted.

JOSEPH TILDEN,  
WM. APPLETON,  
JOHN BRYANT,  
P. T. JACKSON,  
GEO. W. LYMAN.

ss.

*Boston, January 5, 1839.*

personally appeared the aforementioned Joseph Tilden, Wm. Appleton, John Bryant, P. T. Jackson, and George W. Lyman, Esquires, who have taken the oath to the truth of the foregoing statement, by them subscribed,

Before me,

MOSES L. HALE, *Justice of the Peace.*

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SEVENTH ANNUAL REPORT  
OF THE  
BOSTON AND PROVIDENCE  
RAILROAD CORPORATION.

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*Honorable Legislature of the Commonwealth of Massachusetts :*

Directors of the Boston and Providence Rail-road Corporation do hereby make their Seventh Annual Report of their acts and doings, receipts and expenditures, under their Act of Incorporation.

During the past year they have incurred a considerable expense, in strengthening, and widening their bridges, in the erection of engine-house in Roxbury, of passenger-houses in Dedham and Taunton, and in laying a second track from Boston to the Roxbury depot. They have also settled several claims for land and damages. The only remaining claim of much consequence is that for passing over the lands which are partially covered by water west of Boston Neck. This they have been long endeavoring to compromise, and they trust it will be settled during the current year.

They have modified their contract with the Taunton Branch Rail-Road Corporation, for drawing their passenger and freight cars over the same, in conformity to the wishes of that Company. They have also modified their contract with the Boston and New York Transportation Company in relation to the steam-boats, by mutual agreement.

Whole amount expended for construction of the road, buildings, and appurtenances during the past year,

\$21,948 33

is the total amount of capital stock of this corporation

\$1,782,000 00

in, is

The expenses of the company the past year, exclusive of those mentioned in relation to construction, have been as follows :

For repairs of road, exclusive of bridges,	\$11,211 00	
“ repairs of bridges,	5,645 69	
		<hr/>
“ repairs of engines and cars,		\$16,8
“ amount paid to the Rhode Island Rail-road Company for the lease of their road, bridge, and depot, under contract sanctioned by the Legislature,		19,9
“ other miscellaneous expenses,		6,4
		76,7
		<hr/>
		\$120,0

The receipts of the company during the past year have been as follows :

Cash received for transportation of passengers,	\$196,9
“ “ for transportation of merchandise,	64,1
“ “ for transportation of mail,	2,2
“ “ for rents,	1,7
“ “ from the sale of 981 shares of new stock, at an advance of \$3,303 23-100 beyond the par value, amounting to	\$101,4

The above advance is carried in the treasurer's books to its account, leaving the balance of that account \$661 8-100 against the corporation.

The amount divided during the past year is \$136,312, being dividends.

The first dividend was declared in January, 1838, of 4 per cent. on the amount of capital stock then paid in, viz. on \$1,683,900, amounting to \$67,356 00

The second dividend was declared in July last, of 4 per cent. on the capital stock then paid in, viz. on \$1,723,900, amounting to 68,956 00

Total,	<hr/>	\$136,3
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which is respectfully submitted.

JOSIAH QUINCY, Jr.,  
JOSEPH W. REVERE,  
JNO. F. LORING,  
BENJ. R. NICHOLS,

*Directors of the Boston and Providence Rail-road Corporation.*

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, ss.

*Boston, January 21st, 1839.*

personally appeared the above named Josiah Quincy, Jun.,  
W. Revere, John F. Loring, and B. R. Nichols, and made  
at the above report was true according to the best of their  
eye and belief. Before me,

EDW. PICKERING, *Justice of the Peace.*

IN THE SIXTEENTH CENTURY

BY JOHN CALVIN

TRANSLATED BY

JOHN CALVIN

WITH A PREFACE BY

JOHN CALVIN

AND A HISTORY OF THE

PROTESTANT REFORMATION

IN THE SIXTEENTH CENTURY

BY JOHN CALVIN

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AND A HISTORY OF THE

PROTESTANT REFORMATION

IN THE SIXTEENTH CENTURY

## SEVENTH ANNUAL REPORT

OF THE

# BOSTON AND WORCESTER RAIL-ROAD CORPORATION.

*to the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts :*

Directors of the Boston and Worcester Rail-road Corporation, respectfully

## REPORT :

That during the past year the passenger and freight trains of cars run regularly between Boston and Worcester.

There has been, within the year, no loss of a regular trip of the passenger train arising from obstructions by snow or any other cause. There have been several instances of detention of the trains by snow or accidents, but of the 1366 trips, eight only have occupied more than four hours.

There has been no accident which has caused any personal injury to a passenger on the rail-road, either within the past year, or since the opening of the road.

Some small expenditures have been made within the year, in the erection and completion of buildings at the freight depot in Boston, and in improving and securing some parts of the Road.

Whole amount of capital stock paid in, is	\$1,700,000 00
Expenditures within the year, exclusive of the amount charged to the construction of the road, amounted to	\$5,572 97



For repairs of engines and cars,	\$15,672 24
“ repairs of road,	12,521 35
“ fuel used in engines,	12,854 28
“ oil and tallow for engines and cars,	1,985 82
“ clearing road of snow,	43 96
“ salaries and wages of officers, agents, and laborers of every description, taxes, insurance, and all other expenses,	42,495 32

The receipts of income from January 1, 1838, to January 1, 1839, amounted to \$212  
viz :

For passengers,	\$112,032 43
“ freight, hauling gravel and mail,	94,827 31
“ rents and storage,	5,465 29

The amount of dividends declared within the year, was \$102  
viz :

July 1, 1838, 3 per cent.,	\$51,000 00
January 1, 1839, 3 per cent.,	51,000 00

Before declaring the last dividend, the directors reserved for  
ration of perishable materials in the road, and depreciation of  
and cars, beyond the repairs, the sum of \$15,000.

NATHAN HALE,  
DANIEL DENNY,  
ELIPHALET WILLIAMS,  
NATH'L HAMMOND,  
WM. STURGIS.

Boston, *January 17, 1839.*

SUFFOLK SS.

*January 17,*

Sworn to, before me,

GEORGE MOREY, *Justice of the*

THIRD ANNUAL REPORT  
OF THE  
CHARLESTOWN BRANCH  
RAIL-ROAD COMPANY.

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*Honorable Senate and House of Representatives of the Commonwealth of Massachusetts, in General Court assembled:*

Directors of the Charlestown Branch Rail-road Company, do here-  
respectfully, make their Third Annual Report of their acts and  
ings, receipts and expenditures, under their act of incorporation:

During the past year, the road has been completed from the junction  
of the Boston and Lowell Rail-road to Gray's Wharf, so called, in  
Charlestown, and the location from Gray's Wharf to Swett's Wharf,  
the whole line of the road, has been filed with the commissioners  
of the county of Middlesex.

A statement of the treasurer, made up to the 1st instant, it ap-  
pears that the receipts of the company have been,—

Assessments,	\$50,125 00
Loan,	5,000 00
Total,	<u>\$55,125 00</u>

Expenditures to the same date, as appears by said statement,  
have been,—

Engineering, surveying and other expenses,	\$2,600 03
Land purchased,	\$1,618 00
Prices for land taken,	2,000 67—3,625 67
Construction of road,	47,496 49
Total,	<u>\$53,722 19</u>

In compliance with the fifth section of the act passed on 19  
1837, the directors further report :

The total amount of receipts from the date of the last ann  
to 1st instant,—

From assessments,	\$2
“ loan,	
Total,	\$3

The total amount of expenditures the same period,—

For miscellaneous expenses,	\$
“ damages for land taken,	
“ construction of the road,	3
Total,	\$3

All which is respectfully submitted.

CHARLES THOMPSON  
THOMAS C. SMITH,  
ABIJAH GOODRIDGE  
EBEN'R BARKER,  
S. VARNEY.

CHARLESTOWN, Jan. 12, 1839.

COMMONWEALTH OF MASSACHUSETTS.

MIDDLESEX SS.

Charlestown, January 12th

Personally appeared the abovenamed Charles Thompson, T  
Smith, Abijah Goodridge, Ebenezer Barker, and Shadrach  
directors of the Charlestown Branch Rail-road Corporation, a  
ally made oath, that the foregoing report, by them respecti  
scribed, is true, according to the best of their knowledge and

Before me,

WM. WYMAN, Justice of th



## THIRD ANNUAL REPORT

OF THE

## EASTERN RAIL-ROAD CORPORATION.

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*to the Honorable the Legislature of the Commonwealth of Massachusetts :*

The Directors of the Eastern Rail-road Company do hereby respectfully make their Third Annual Report of their acts and doings, receipts and expenditures, under their act of incorporation.

At the date of their last report about twelve miles of the road between Boston and Salem was mostly graded, and the bridges, culverts and other superstructures, on this part of the road nearly completed, the iron rails and chairs, and other materials for the superstructure of railway, for the whole distance from Boston to Salem contracted for, and excepting the iron, mostly delivered.

The timely aid of the credit of the state, granted by the munificent and enlightened policy of the Legislature of the last year, to the amount of \$90,000, enabled the Directors, on the opening of the road, notwithstanding the embarrassed state of the business of the state, to try to proceed vigorously in the completion of the road, and it was confidently expected that it would have been opened early in July. An unexpected delay in the arrival of the iron rails and chairs disappointed this expectation, and the road was not opened until the latter part of the ensuing month.

On the 27th of August, the road was experimentally opened, and the stockholders and invited guests transported over it.

On the 28th, the road was opened for public travel, since which time, however, considerable additional work has been done in finishing the road-way, principally in cutting the side ditches, and other works

for the effectual draining of the cuts, and in widening in some places the embankments, and in covering exposed parts of the embankments with rubble, and in laying down additional turn-tables, switches, &c. So that the directors believe the road to be in excellent condition.

Allusion was made in the last annual report to the selection of a new form of rail and chair, which provides for a greater elevation of the rail above the road bed, than has been usual in other roads. The experiment thus far has been very successful, the rail has proved to be very firm, and the chairs have resisted the shocks of the engines and trains without failure, except in a very few instances. Considerable advantage is also anticipated from the greater elevation of the rail in case of deep snows, although from the favorable state of the weather in this respect, thus far this advantage has not been tested.

The directors consider this a proper opportunity to express their conviction of the enlightened policy of former legislatures of the Commonwealth, in granting the credit of the state in aid of individual enterprise, in carrying on and completing the great chain of internal improvement, in the state of which the Eastern Rail-road forms a most important link. Commencing as it does upon the tide waters of Boston harbor, below all bridges or other obstructions, and united by said waters with the depot of the great Western Rail-road, at the South Cove, and passing in its course directly through the tide waters of the harbors at Lynn, at Salem, at Beverly, at Newburyport, at Parker's river, and at Newburyport, and on its way near the harbor of Ipswich; and after passing the Merrimack, when it is continued according to the original intention of its projectors, to the Legislature, who granted the charter, coming upon the navigable waters of the Piscataqua, always accessible to steam navigation from the far East, it is destined to form throughout its length, the important channel of communication between the Western Rail-road, and the extensive and fast improving Eastern Rail-road.

There is also another and important fact connected with the Eastern Rail-road, which the directors believe adds much to its importance as a great public work, which is the density of the population immediately along its line. This circumstance alone, according to the experience already had on other rail-roads, similarly situated, was believed, ensure it an ample income. Wherever there are large masses of population whose occupation leads them to travel, increased facilities for travelling acts as a stimulus to the increase of communication.

not anticipated even by the most sanguine, and such has been the result on the Eastern Rail-road, so far as it has been completed. The directors feel justified in expressing the opinion, that it has never, happened that so great an amount of public convenience resulted from the completion of a line of rail-road communication, as resulted in the opening of the road between Salem and Boston. An act was passed by the Legislature on the      day of April, 1837, giving the time for the completion of the road below Salem, for three years from the 30th of Sept. 1840, and soon after the opening of the road to Salem it became a question, whether the company should delay themselves of this extension, and delay the work upon that part of the road. To determine this question a very full meeting of the stockholders was held at Salem, on the 22d September last. At this meeting, the question was very fully considered, and the following resolutions were proposed in a report of the directors were adopted with great unanimity, viz :

*Resolved*, That the Eastern Rail-road Company are pledged in good faith to go on and complete their rail-road as far as Newburyport.

*Resolved*, That the present time is the best time to proceed with the completion of the road to its completion.

*Resolved*, That it is the wish of the stockholders, that the directors should proceed with all the despatch consistent with due economy, to construct and complete the road to Newburyport.

*Resolved*, That whenever satisfactory assurances are given that the line from Portsmouth to the Massachusetts line will be built, the directors be requested forthwith to put the road from Newburyport to the line of the State under contract.

Under these resolves, proposals were issued for the work of grading and masonry upon the line from Salem to Newburyport, and contracts have been entered into for nearly all this work, at prices without estimates of the engineer, with persons who, it is believed, are competent to complete their contracts. Under these contracts, the work is progressing with all the despatch consistent with due economy, and it is expected, that it will be completed and the road bed be laid for the superstructure or railway within the present year.

A statement of the accounts of the treasurer, exhibited by that officer, appears, that the cost of the road, as per his books, posted to



Dec. 31st, 1838, including expenditures eastward of Salem, of surplus lands, has been as follows, viz :

Preliminary survey,	\$6
Engineering account,	28
Expense account,	7
Purchase at Lewis' wharf,	23
Land damages and fencing,	34
Salaries,	12
Depot wharves at East Boston,	69
Depot at Salem,	8
Cars and engines,	51
Grading, bridges, railway, East Boston Ferry, &c.,	58
	<hr/> \$83

And the receipts have been as follows, viz :

Received from the State of Massachusetts,	\$29
Interest account and premium on State scrip,	3
From assessments,	470
	<hr/> \$764

From a report of the superintendent exhibited by that officer, it appears, that the income arising from the business of the road, since it was opened up to the 31st Dec. 1838, has been as follows, viz :

Income from passengers,—

From Boston to Salem,	26,157½ tickets sold, at 50 cts.	\$13
“ do. 2d class,	635	“ 37½ “
“ Boston to Lynn and		
Marblehead,	11,303	“ 31 “
“ do. do. 2d class,	109	“ 25 “
“ Salem to Boston,	25,748	“ 50 “
“ do. 2d class,	175	“ 37½ “
“ Salem to Lynn,	4,614	“ 25 “
“ Lynn to Boston,	9,787½	“ 31 “
“ do. 2d class,	24	“ 25 “
“ Lynn to Salem,	4,493½	“ 25 “

Marblehead to Boston, 1,723 tickets sold, at 31 cts.,		\$534	13
do. 2d class, 16 "	25 "	4	00
Marblehead to Salem, 24 "	25 "	6	00
passengers, received			
of them, \$1,510 91			
which sum averaged,			
is, 3,595 "	42 57-1000	1510	91
by companies, rec'd			
of them \$263 91 which			
averaged, is equal to 628 "	42 57-1000	263	91
		<u>89,032½</u>	<u>\$37,422 36</u>

that the current expenditures arising from the business of the  
 one hundred and eight running days, from the opening of the  
 Dec. 31, 1838, inclusive, (Sundays being excluded,) have been  
 as, viz:

on the road, . . . . .	\$1,795 20
of engines and cars, and work done in machine	
. . . . .	1,925 88
. . . . .	3,154 76
wages and other expenses, including ferriages,	10,942 35
	<u>\$17,818 19</u>

whole income of the road has arisen from the carrying of pas-  
 sengers and their baggage, no merchandise trains having yet been run.  
 The foregoing account is made up to December 31st, 1838. Since  
 then, up to this time, January 18, 1839, 11,069 passengers have  
 been carried, making a total since the opening of the road, of 100,101  
 passengers.

which is respectfully submitted.

GEO. PEABODY,  
 ROBERT G. SHAW,  
 AMOS BINNEY,  
 FRANCIS J. OLIVER,  
 STEPHEN A. CHASE,  
 DANIEL ADAMS, 3d,  
 B. T. REED,  
 L. THORNDIKE,  
 ISAIAH BREED,

on, January 18, 1839.

*Directors*

SUFFOLK ss.

*Boston, January 18th, 18*

Then Robert G. Shaw, Amos Binney, F. J. Oliver, Daniel A. 3d, B. T. Reed, L. Thorndike, and I. Breed, appeared and severally made oath, and Stephen A. Chase affirmed, that the statement said was true, according to the best of their knowledge and belief.

Before me,

WM. FETTYPLACE, *Justice of the Peace*

Essex ss.

*January 19, 18*

George Peabody, above named, makes oath that the foregoing statement by him subscribed, is, to the best of his knowledge and belief

Before me,

NATH'L J. LORD, *Justice of the Peace*



THIRD ANNUAL REPORT  
OF THE  
NASHUA AND LOWELL  
RAIL-ROAD CORPORATION.

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*Honorable Legislature of the Commonwealth of Massachusetts :*

Directors of the Nashua and Lowell Rail-road Corporation respectfully submit this, their *Third Annual Report* of their acts and doings, receipts and expenditures under their charter of incorpora-

In our last annual report, the work upon the road has been progressing, notwithstanding the many pecuniary difficulties of the year, and on the eighth day of October last, the road was opened for the transportation of passengers to a temporary depot within about four hundred yards of the terminus at Nashua. Since that time, the track has been completed, and on the twenty-fifth day of December a permanent depot was prepared and the road opened through the whole extent. The road, however, is not fully completed, nor the arrangements for freight and passengers perfected, so that neither the cost of the construction of the road, nor its present receipts and expenditures can now be given.

The following statement will exhibit a correct view of the financial condition of the corporation, as they now appear from the books of the corporation, in those particulars required to be specified in the annual

The Receipts have been as follows :—

Amount received for stock to date,		\$23
“ “ for interest, &c.,		5
“ “ on loan of State scrip,		1
“ “ on other loans.		
		<hr/>
“ “ for transportation of passengers, from October 8th to January 1, 1839.		\$30
Total Receipts to date,		<hr/> \$31

The Expenditures have been as follows :—

Amount paid for land and fencing,	\$42,558 80
“ “ for grading and bridging,	95,534 14
“ “ for superstructure and rails,	91,898 11
“ “ for depots and fixtures,	7,775 64
“ “ for engineering and expenses,	16,589 76
“ “ for engines and cars,	25,583 49
	<hr/>
“ “ for transportation of freight and passengers, (\$807 64 being for fuel,) . . .	4,185 34
“ “ for repairs of road, . . .	645 33
“ “ for repairs of engines and cars,	282 15
	<hr/>
Total Expenditures to date,	<hr/> \$28

It will be observed, that the above statement contains the *expenditures* up to this date, and the *receipts* to the first day of January. Since that day there has accrued for the transportation of passengers and freight, a further sum estimated as follows :

Amount accrued from passengers from January 1, to January 22, about . . .	\$1
“ “ for freight from November 23, to date,	1



to December fifteenth, an arrangement existed with the Boston Lowell Rail-road Corporation, by which they were to do all the transportation, and receive one half of the gross receipts, until our engines and cars were in readiness for use. The amount so paid is included in the above statement. Since the road was opened, about 100 passengers have passed over it, being an average of more than 10 yearly. This number greatly exceeds the estimates heretofore made by us, although the travel during the last three months has been less than the average of the year. The freight cars commenced running November twenty-third, and, although not in full operation, on account of the season, want of depot, and suitable accommodations, other embarrassments, the freight now averages about thirty-five tons per day. Application has been made to your honorable body, to reduce the rate of tolls to be paid by us for the use of the Boston and Lowell Rail-road, by which it is expected, that some inconveniences under which we now labor may be remedied, the amount of transportation increased, and the public greatly benefited.

A share of the stock of the corporation has yet been sold for the payment of assessments, and the whole amount now due on the part of delinquent stockholders is only about \$3,600.

Our cars now run in connexion with the trains upon the Boston Lowell Rail-road, making three trips each way daily for passengers and one trip each way daily for freight. No accident to the passenger cars or passengers has occurred since the opening of the road.

Pursuant to the provisions of the act of your honorable body at the last session, to aid in the construction of this road, scrip or certificates have been received by the Treasurer of this Corporation from the Treasurer of the Commonwealth, to the amount of *fifty thousand dollars*.

Being desirous of repaying the amount before the expiration of the period limited, we have thought it advisable not to make a sale of the bonds, but to borrow money upon their pledge, which has been done accordingly.

The road is not in such a state of completion at present, as to render compliance with the requirements of the act of April 19, 1837, practicable on our part. We indulge the hope however, that it may be effected, as well as the apportionment of the cost of construction of separate portions of the road lying within the two States, (committees for that purpose having been appointed in both States,) at some time during your present session.

The act passed by your honorable body at its last session, enacted by the Legislature of New Hampshire, at its session last, authorizing the union of the two corporations in New Hampshire and Massachusetts, known by the name of the Nashua and Lowell Rail-road Corporation, in one body corporate, has been duly and such union effected. The act of your honorable body, for the time for the completion of our road, for the period of one year from the first day September last, has also been accepted.

All which is respectfully submitted.

DANIEL ABBOTT  
JESSE BOWER  
PETER CLARK  
ADIN HOLBROOK  
JOSEPH GREELY  
C. H. ATHERTON  
HENRY UPHAM

*January 23, 1839.*

HILLSBOROUGH ss.

*Nashua, January 23, 1839.*

Then personally appeared Daniel Abbott, Peter Clark, Jesse Bower, Adin Holbrook, and Joseph Greely, directors of the Nashua and Lowell Rail-road Corporation, and severally made oath, that the statement aforesaid, was substantially true according to the best of their knowledge and belief.

Before me,

CHARLES J. FOX, *Justice of the Peace.*

SUFFOLK ss.

*Boston, January 23, 1839.*

Then personally appeared C. H. Atherton and Henry Upham, directors of the Nashua and Lowell Rail-road Corporation, and severally made oath that the statement aforesaid, was substantially true according to the best of their knowledge and belief.

Before me,

FRANCIS WELCH, *Justice of the Peace.*

## THIRD ANNUAL REPORT

OF THE

NORWICH AND WORCESTER  
RAIL-ROAD COMPANY.

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*Honorable Senate and House of Representatives of the Commonwealth of Massachusetts, now in session :*

Directors of the Norwich and Worcester Rail-road Company respectfully present their Third Annual Report, as follows :

In their last annual report, the work upon the graduation, masonry-bridges of the rail-road has proceeded without interruption, and is entirely graded for the whole distance from Norwich to Worcester, with the exception of a few hundred feet, which will be finished at a small expense, in about a month from this time. The amount received into the treasury of the company from all sources, up to the 1st Dec. 1838, as appears by the books of the treasurer, amounts to the sum of seven hundred eighty-three thousand six hundred and eighty-four dollars; and the whole amount expended up to the same date amounts to the sum of one hundred forty-two thousand, six hundred sixty-seven dollars and three-fourths cents.

The company have adopted an edge rail of fifty-four and one half pounds weight per yard, with a chair of approved construction. The contract has been perfected for the iron for the entire rail-road, to be delivered as soon as it can be manufactured and shipped to this place.

With the exception of one or two miles, contracts have been made for the delivery of the timber during this winter and spring, and unless some delay not anticipated in the manufacture or delivery of



the iron from Europe, the road will be in operation for the first time in the ensuing autumn.

The timber adopted for the superstructure are sleepers of chesnut or cedar, seven feet long, faced on two parallel sides of five inches, and to measure not less than six inches in thickness, the ends to be cut square and the bark removed. The ties are of chesnut, hemlock or pine, eight by four inches, in length sixteen feet or upwards. Under pieces of the same eight by four inches.

On such portions of the road, where the soil was not good, the top soil has been removed and gravel put on to the depth of about two feet.

The connexion of the rail-road with the Boston and Worcester road, at Worcester, will be convenient to both corporations, and will be so arranged, that the cars may readily pass from one road to the other; and at Norwich, the depot is at the steamboat wharf, and will be so constructed as to facilitate the transshipment of goods and passengers between the cars and the steamboat.

The act uniting the corporations in the states of Massachusetts and Connecticut requires that the accounts of the company shall be annually examined by the commissioners appointed by the governor of each state. Accompanying this report, and constituting a part of it, is the report of the commissioners on this subject.

It is, perhaps, proper to remark, that the directors have full confidence in the value of this rail-road as a public work, as well as a private enterprise. They are persuaded, that the business which will be done, has in their previous reports anticipated, has not been over-estimated.

That it will furnish a desirable route between Boston and Worcester, and will afford important advantages to a densely populated and fertile section of country, and will afford a mutual benefit to both states, by restoring, in no small degree, to the city of Boston, the business from Connecticut, which has been for many years withering.

From the small amount of work to be done on the masonry, and dressing the road-bed, the directors are enabled to estimate with considerable accuracy, that the expenses for the graduation of the road, and bridges, for the entire rail-road, will be \$526,545 85, and for the purchase of fifty-eight and one-half, (the length of the road,) \$9,000 78.

The following statement, by the engineers of the company, gives an estimate of the expenditures and receipts of the company for the first year after it is in full operation.

The estimate of expenses is deemed too high; at the same time, it is believed that the calculations of the probable business on the road are no means overstated.

of the annual expenses, renewals, repairs, &c., on the Nor-  
and Worcester Rail-road:

Superintendent, . . . . .	\$2,000 00
Costs of transportation, at . . . . . \$1,200	2,400 00
Engines, at . . . . . 800	1,600 00
Port laborers and brakemen, at . . . . . 350	17,500 00
Conductors at way depots and ticket offices, at 500	4,000 00
Station ticket office clerks, at . . . . . 800	1,600 00
Inspectors, at . . . . . 800	2,400 00
Firemen, at . . . . . 700	3,500 00
Porters, at . . . . . 350	1,750 00

Secretary, treasurer, and other officers, say, . . . . .	5,000 00
Office expenses, advertising, &c., . . . . .	2,000 00
	<hr/>
	\$43,750 00

Repairs, renewals, and repairs of engines, cars, and oil, &c., \$125,000, at 20 per cent., . . . . .	25,000 00
Cost of road, renewals, &c., 60 miles, at \$350, . . . . .	21,000 00
Cost of oil, . . . . .	20,000 00
	<hr/>
	\$109,750 00

Estimated annual receipts:

Passengers from Boston and New York passengers each per day, equal to 120 passengers, at \$2, \$240 00	
Passengers from Worcester and way travel, equal to 60 passengers over the road each way per day, 20 passengers, at \$2,50, . . . . .	300 00
Freight, 100 tons of freight, each way, per day, equal 100 tons, at \$3,50, . . . . .	350 00
	<hr/>
	\$890 00
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Receipts per year, 313 days, at \$890,00 per day, . . . . .	\$278,570 00
Deduct annual expenses, . . . . .	109,750 00
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Balance, . . . . .	\$168,820 00

at 11½ per cent. on one and a half million of dollars capital. Three

times the amount of business estimated would add very little to annual expenses.

All which is respectfully submitted.

JOHN A. ROCKWELL,  
JNO. BREED,  
J. G. W. TRUMBULL,  
RUSSELL HUBBARD,  
A. F. GILMAN,  
THOMAS ROBINSON,  
G. S. PERKINS,

*Di*

NORWICH, *January 31, 1839.*

NEW LONDON COUNTY SS.

*February 9th*

Sworn to, before me,

GEORGE PERKINS, *Justice of t*

SUFFOLK SS.

*City of Boston, February 12*

Personally appeared George L. Perkins, Esq., and made o  
the foregoing report is true, according to his best knowledge a

Before me,

WILLIAM STEPHENSON, *Justice of t*



, the subscribers, commissioners of the Norwich and Worcester Road Company, appointed by the governors of the states of Massachusetts and Connecticut, having examined the foregoing, believe it correct, and approve of the same.

JOHN DE WITT,

*Commissioner for the State of Connecticut.*

CHARLES HUDSON,

*Commissioner for the State of Massachusetts.*

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meeting of the Commissioners of the Norwich and Worcester Road Company, at Worcester, in the Commonwealth of Massachusetts on the 31st day of January, 1839, for the purpose of investigating accounts and expenditures of said company, and for deciding what of expenditures made by said company are applicable to that part of road lying in the state of Connecticut, and also what part is applicable to that part of said road lying in the state of Massachusetts. And having examined the accounts of said company, we do find that the last settlement of the accounts of said company, which were brought up to Dec. 1st, A. D. 1837, up to the 31st Dec. A. D. 1838, embracing a period of thirteen months, there has been expended by said company, in the engineer department, \$12,367 85, of which sum we apportion to that part of the rail-road lying in the State of Connecticut, the sum of \$8,245 23; and to the portion lying in the State of Massachusetts, \$4,122 62. In the carriage department, for cars, &c., there has been expended the sum of \$2,189 14; of which, we put to Connecticut, \$1,459 43; and to Massachusetts, \$729 71. For salaries, the sum of \$72 49½; of which, to Connecticut, \$3,915 00½, and to Massachusetts, \$1,957 49. For contingent expenses, the sum of \$3,424 73; of which, to Connecticut, \$2,283 15; to Massachusetts, \$1,141 58. For other expenses, \$737 82; of which, to Connecticut, \$491 88; to Massachusetts, \$245 94. And we find, by the books of said corporation, that there has been expended for real estate and land damages in Connecticut, \$45,198 22; for graduation, masonry and bridges in Connecticut, \$102,607 38½. For real estate and land damages in Massachusetts, \$23,963 42; for graduation, masonry and bridges in Massachusetts, \$69,180 19, making the sum total expended by said compa-

## NORWICH AND WORCESTER RAIL-ROAD.

ny, during the above period of thirteen months in Connecticut \$164,200 20½; in Massachusetts, \$101,340 95, making a total disbursement, during said period, of \$265,541 24½.

To which, if be added the sums expended as by our last annual report, viz: in Massachusetts, \$115,276 89; in Connecticut, \$361,849 28½, will show a total amount as expended by said company, up to the 31st Dec. A. D., 1838, of \$742,667 41½.

Said Commissioners also find, upon examination of the books of said company, said corporation have kept distinct and separate accounts of the expenditures in Connecticut and Massachusetts respectively, agreeably to the acts of said states, creating the present Norwich and Worcester Rail-road Company.

All which is respectfully submitted, by

**CHARLES HUDSON**

*Commissioner for the State of Massachusetts*

**JOHN DE WITT,**

*Commissioner for the State of Connecticut*

WORCESTER, Jan. 31, 1839.



## THIRD ANNUAL REPORT

OF THE

## SEEKONK BRANCH RAIL-ROAD COMPANY.

*Before the Honorable General Court of the Commonwealth of Massachusetts,  
 begun and holden at Boston on the 1st Wednesday of January, A. D.,  
 1899:*

Directors of the Seekonk Branch Rail-road Company respectfully  
 report their acts and doings during the preceding year.

have received the sum of . . . \$19,993 09

have expended the sum of . . . \$21,235 06

the surplus of expenditure, and about three thousand dollars of the  
 assets, have been furnished by two of the building committee, and the  
 remainder has been furnished by the share holders of the company.

which is respectfully submitted.

TRISTAM BURGESS,  
 JOHN W. RICHMOND,  
 MOSES GUILD,  
 JONATHAN BLISS,

*Directors.*

CITY OF PROVIDENCE ss.

January 24,

Then appeared Tristram Burges, John W. Richmond, and Guild, and severally made oath, that the foregoing statement according to the best of their knowledge and belief.

Before me,

WALTER S. BURGESS, *Justice of t*

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The other director, Richard J. Arnold, being absent in Georgia, his attestation is not annexed.

## FOURTH ANNUAL REPORT

OF THE

## TAUNTON BRANCH R. ROAD CORPORATION.

*Honorable Legislature of the Commonwealth of Massachusetts :*

Directors of the Taunton Branch Rail-road Corporation do hereby  
 present the Fourth Annual Report of their acts and doings, receipts  
 and expenditures.

On June 5, 1838, a new contract was entered into between this  
 Corporation and the Boston and Providence Rail-road Corporation, by  
 which it is provided, that the passenger and merchandise cars of this  
 Corporation shall be transported, between the junction of the two rail-  
 roads at Mansfield, and Boston and Providence, respectively, by the  
 engines of the Boston and Providence Rail-road Corporation; and  
 the latter corporation shall be entitled to receive the sum of fifty  
 cents for each passenger, and the sum of one dollar for every ton of  
 merchandise. This contract is to be in force for three years.

Total amount of capital paid in, is . . .	\$249,825 00
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Expenditures during the year ending November 30,

1838, have been as follows:—

Repairs on the rail-road, . . . . .	\$1,799 09
Repairs on the engines and cars, . . . . .	966 36
Miscellaneous expenses, including the amount paid to the Boston and Providence Rail-road Corporation for their proportion of the receipts, the cost of fencing the rail-road, interest, &c. . . . .	32,180 60
Total amount of expenditures, . . . . .	\$34,966 05





## THIRD ANNUAL REPORT

OF THE

## WESTERN RAIL-ROAD CORPORATION.

*to the Honorable the Senate and House of Representatives of the Commonwealth of Massachusetts :*

presenting to the Legislature their *third* Annual Report, the Directors of the Western Rail-road Corporation deem it due to the Commonwealth, as a principal stockholder, and a guarantor of the debt of the corporation, to exhibit a *detailed* account of their operations during the past year,—of the present condition of the work which they have in charge,—and the prospects of its future advancement.

On the date of the last Report, the whole line of the road, *eastward* of the Connecticut river, a distance of 54 miles, had, (with the exception of about two miles adjoining the river,) been put under contract for grading; the graduation of 27 miles of the lighter part of it had been completed; and the work was in progress upon the remaining 25 miles.

An opinion was then expressed, that, should no unfortunate obstacle be interposed to delay, the whole of this part of the line would be graded ready for the superstructure, by the spring of 1839.

Soon after that time, the two miles adjoining the river were put under contract, and the work of graduation upon all the unfinished sections, has since been vigorously prosecuted. At the present time there are about 52 miles fully graded; and, excepting at four points upon the line, the grading is already nearly finished. The excepted points are, New Worcester—at the summit in Charlton—at Twelve Mile

Brook, in Wilbraham, and on the sections near Connecticut all these places, excepting at the Charlton summit, for six months prior to the grant by the last Legislature, the work retarded by the uncertainty which existed, whether funds provided for the prosecution of the enterprise. They are, however, so much advanced as to justify the belief, that they will for the rails in the month of May next. The lighter iron sections, upon portions of which the grading is yet unfinished, easily be completed during the winter.

Of the masonry, little remains to be done, excepting the construction of a few road bridges, and these will be forwarded at an early date.

The rail-road bridges upon this part of the line were completed in May last. About half of them are constructed, and the remainder for the residue are delivered, and they are now in preparation for use.

The tables and schedules annexed hereto will exhibit, in detail, the quantity of work which had been done east of the river on the 30th of November, 1838, and that which then remained to be done. These embrace the quantity of earth, loose rock and solid rock to be excavated and remaining to be excavated; the masonry and bridges completed and remaining to be done; the number of rail-road bridges and culverts; and schedules of the grades, curves, and some of the larger cuttings and embankments; with a specification of the distances, by the road, between some prominent known points.

The attention of the Board has been seasonably directed to the procuring materials for the *superstructure* of the road east of the river. They have adopted the *edge rail* of the T pattern, weighing about 40 pounds to the yard. This is laid upon transverse sleepers of wood, placed three feet apart from centre to centre; and these are supported by bearings, under the rail, upon longitudinal sills 8 inches by 8 inches, which are wholly imbedded on a road-way of gravel or sand.

The timber for the superstructure has all been contracted for, and that for about 33 miles is already delivered. The residue will be received in season for early operations in the coming spring.

The *Iron* for about 17 miles of the road was purchased last year,—it has arrived and is principally delivered on, and that for the residue is contracted for, with orders for its delivery in season for the spring and summer operations.

In the mean time, about six miles of the track have been laid out for use, commencing 2 1-2 miles from Connecticut river and

ward. The laying of the residue of the rails will be completed in the spring, and completed at the earliest practicable period. The *Engines* and *Cars* necessary to put this part of the road in full operation, are under contract,—the former to be built at Lowell, and the latter at Worcester and Springfield; and it is believed they will be equal to any now in use in the country.

Fit and convenient *Depot Lands* for the Stations have been secured at Worcester, Charlton, South Brookfield, West Brookfield, Wrentham, Palmer, Wilbraham and Springfield, and negotiations are in progress for lands for the same purpose, in the village of Clappville. These are all the points at which the Directors have, as yet, decided to locate the stations—thus providing for the trains to stop seven times between Worcester and Connecticut river, a distance of 54 miles. The lands have all been procured at the inconsiderable expense of \$1200.

The *Damages* for *Land* and *Fencing*, for the road way, have all been paid, with the exception of less than one mile at different intervals. The few remaining claims are liquidated by agreement, or by adjournments of the county commissioners. The average cost, exclusive of a mile in Worcester village, was formerly estimated at \$1240; but it proves to be about \$1250 per mile, including all incidental expenses of commissioners, referees and one jury. The number of claims thus adjusted, is about 350.

The directors have not been unmindful of the importance of persevering effort to open this part of the road for use at an early day. They for some months directed the particular attention of the executive officers of the corporation to this object; and it is believed, no exertion has been wanting to accomplish it.

Although a great part of the road has been graded, and contracts have been made for the materials for the superstructure, and for the engines and cars, yet the undersigned beg leave to remind the friends of the enterprise, that much remains to be done, before the road can be efficiently opened for public use. In addition to the remaining part of the grading, masonry and bridging—the delivery, preparation, transportation and proper distribution of the iron, plates, spikes, sills and sleepers for the superstructure—the laying down of 48 miles of track with the necessary turnouts—the preparation of the Depot grounds—the erection of the buildings at nine stations—the delivery and trial of the engines and cars—the means for the supply of water at the several stations—the erection of signs at the road-crossings—the purchase of fuel

for all the stations—and the employment and organization of the subordinate officers required for the moving power, and for supervising the business of the road—will demand much time and labor on the part of all the officers of the corporation. It must also be borne in mind, that, although the various contracts are believed to be made with the most responsible men, yet the punctual fulfilment of their engagements is not within the control of the corporation; and a failure to perform any one of them, may cause serious embarrassment and delay of the work. It will be recollected, also, that while these various branches of labor are in progress, much of the attention of the corporation must be directed to the whole line of 62.6 miles westward of

In view of all these considerations, the undersigned think it would be hazardous to name, now, with certainty, any particular date when the road east of Connecticut river will be in successful operation. It will be done at the earliest period, consistent with the great views of the Board. And, if no unforeseen obstacle interposes, they flatly declare themselves, that that event will not be postponed beyond the month of September next.

At the time of presenting our last Report, the field-work for the location of the road *westward of Connecticut river*, had just been completed, and the maps and estimates were in progress. The definite location passed through the towns of Westfield, Connecticut, through the Pontoosuc valley, to the summit in Washington, and thence through Hinsdale, Dalton, Pittsfield and Richmond, to the State boundary. The order of the Board directing this location, had, however, three points for subsequent decision, viz. the direction of the lines through the villages of Westfield and Pittsfield, and the termination of the road—either at the Canaan Gap, in West Stockbridge, or at Hatch's Gap, in Richmond. It was then undecided which of these terminations, the friends of the Albany road would prefer to connect with our line. At the presentation of the Report upon our final location, it was, however, ascertained, as far as was practicable, that their preferences were for the union at the Canaan Gap; and the Board established their location directly to the Canaan Gap, leaving the village of West Stockbridge about one mile south of our line. At the same time, the route passing a little north of the village in Pittsfield, was also established. Farther information was being obtained respecting the lines through Westfield, and a definite decision probably, now be made upon them in a few weeks.



The act of the last Legislature, in aid of the Corporation, required that, during the year 1838, to "commence the construction of such part of the road, lying between Springfield and Pittsfield, as would require the longest time for its completion; and to prosecute the same in such a manner, as to secure the completion of the whole road from Springfield to the western line of the State, as early as was practicable, with a due regard to economy." This provision accorded with the judgment and wishes of the Directors; and in pursuance of it, they, in March last, ordered about 34 1-2 miles of the western part of the road to be put under contract, extending from near Henry's tavern in Chester to the State line, and including the heaviest part of the work, with the proviso, that upon about 11 1-2 miles of it, between the village of Pittsfield and the summit in Washington, the work should not commence, until it should be necessary, in order to ensure its completion in the time the more difficult sections should be graded. Under this arrangement, the grading upon the remaining 23 miles was commenced in May last, and it has been prosecuted with as much efficiency as was practicable, to the present time. About five miles of it are already completed.

The stockholders in the western part of the State were early encouraged, that the part of the road west of Pittsfield, would be put in operation as soon as the part of the line eastward of Connecticut river. And the Board have always been strongly desirous to fulfil this expectation. The limited means of the treasury, however, during the latter part of the year 1837, and the winter of 1838, rendered it impossible for them to commence that work, without incurring obligations, which they had no means of meeting. But as soon as was practicable, after funds were provided by the liberality of the last Legislature, that division was let to efficient and responsible contractors, with express obligations in the contracts, to complete the grading by the 1st of July, 1839. And they have ever since been required to keep upon the earlier sections of it, as large a force as they could employ, without incurring any disproportioned expense. And the Directors have, heretofore indulged the hope, that the whole might be completed by the designated time. As the work has advanced, however, the character of the results upon some of the heavier sections, has proved much more difficult than had been anticipated. And the Resident Engineer is of opinion, that there are two of those sections which it will be impossible to finish, within the time specified in the contracts. But

no exertions will be spared to expedite this work, and to place the superstructure upon it, as soon as is practicable.

The work upon the 11 1-2 miles between Pittsfield and the Kingston summit, will probably be commenced in the coming spring.

The Division from the summit to near Henry's, in Chestnut tance of about 11 1-2 miles through the Pontoosuc valley, entails much very heavy rock excavation, and extensive embankments and a large quantity of expensive and heavy masonry. The two sections have a long rock-cutting, a part of which is 58 feet deep, and two large embankments of 49 and 37 feet in height. The contractors for grading these, stipulate to finish them by the 1st of July, but in one contingency, they are to be allowed till the close of the year to perform the work. They are now proceeding with it unsatisfactorily. But in the present state of the work no definite estimate can be formed, as to the time when it will be completed. The sections of this Division may be graded somewhat within the time allowed for those at the summit.

The character of the country between Henry's and Concord river, being 28 miles, is such, as to need much less time for grading than the summit Division, though there are points in the line which may require some 15 months. The Directors, therefore, deem it impolitic to commence upon it during the past year. They now wish to put it under contract soon, and to begin grading in the spring of 1839.

The time of commencing this work, and the mode of conducting it afterwards, may depend somewhat upon the question, whether an attempt should be made to open it for use, before, and independent of the heavier summit Division. This question, again, depends upon the time when the summit sections will probably be graded. And it is proposed that *this* point cannot reasonably be ascertained before the next season, when the character of the rock cutting there, may be more clearly developed. If this should then forbid the hope of grading the summit sections before the close of 1840, the Directors would probably, desire to have the 28 miles east of Henry's, then so far advanced, as to enable them to finish the grading of them in the summer of 1840, and to open that part of the line for use in the course of the next season.

If, on the contrary, it should, during the next season, appear that the summit Division might all be prepared for the superstructure in the summer of 1840, it would then be about as much advanced, as the work

ould well be, and the whole might probably be opened for use at the time.

thus setting forth the condition and future prospects of this Road, may not be improper to state briefly, the condition of the enterprises of similar character, with which it is proposed hereafter to connect it. Its western termination, the Hudson and Berkshire Road has been completed and opened for use, within the last year, under prospects of less flattering to the friends of it. And that road has been extended to the village of West Stockbridge, a distance of 2 3-4 miles within this

within the last month, a very large meeting of the friends of the Albany and West Stockbridge Rail-road has been holden at Albany, energetic measures have been adopted to secure the prosecution of the work during the year 1839.

The Rail-road is also now in grading, which is to extend from the Hudson at Bridgeport, in Connecticut, through the Housatonic valley to West Stockbridge.

The half of the New Haven and Hartford road is now in use, and the grading upon all the residue of it is advancing rapidly. Surveys are also now in progress for a rail-road from Hartford to Springfield, with a view to unite that with the Western road.

And the friends of the Worcester and Norwich road give strong assurances, that it will be in full operation before the close of 1839.

Soon after the passage of the act of February 21, 1833, authorizing the issuing of the scrip of the State, for two millions, one hundred thousand dollars, to aid the construction of the road, the Corporation, at the adjournment of their last annual meeting, assented to the provisions thereof, and they subsequently gave to the Commonwealth the amount required thereby. And they have since that time made the necessary collections upon the assessments due from the private Stockholders, which were prescribed by that act, to entitle them to receive *the whole of the scrip* thus authorized to be issued.

At the annual meeting of the Corporation in February last, all the Stockholders, Directors of the previous year, were re-elected.

## OF THE FINANCES.

Within the last month, a full report has been made to the Board, on the subject of the *Finances*, embracing the estimated cost of the whole work,—and the whole means provided therefor,—an account



of past expenditures and present resources—and the amount needed for the future. The following is an abstract of that document.

*Estimated Cost of the Road.*

*First. East of Connecticut river.*

For graduation, masonry, bridging, superstructure, engines, cars, buildings, and Engineer Department,	\$1,739,
Miscellaneous expenses, including salaries, printing, stationary, rent of offices, expenses of Directors and Committees and all incidental expenses from Jan. 1836, to Dec. 1839, including \$8,000 for surveys in 1835,	\$34,
Depot Lands;	4,
Land damages and fencing 54 miles,	86,
<b>Total cost east of the river,</b>	<b>\$1,864</b>

*Second. West of Connecticut River.*

For graduation, masonry, bridging, superstructure, engines, cars, depot buildings, and Engineer Department, (the latter to December, 1840,)	\$2,213,493 47
Miscellaneous expenses to April 1, 1841, (including as before,)	28,497 12
Land damages, fencing and Depot lands,	84,452 02
<b>Total cost west of the river, 62.6 miles,</b>	<b>2,326</b>
<b>Total cost of the Road—116.6 miles,</b>	<b>\$4,191</b>

*Resources of the Corporation.*

Six assessments, being \$30, on 30,000 shares and interest available thereon, deducting probable losses,	\$910,643 30
Proceeds of State scrip of 1838,	2,100,000 00
<b>Total resources,</b>	<b>3,010</b>
<b>Balance, to be provided for,</b>	<b>\$1,180</b>

*Past Expenditures, and Resources for the future.*

Dec. 1, 1838, there had been expended and paid	1,259,619 11
which left of available resources applicable to payments after that date,	1,751,024 19
Amount estimated necessary to complete the road east of the river and put it in full operation,	755,027 66
<hr/>	
Balance, amount applicable west of the river after Dec. 1, 1838,	\$995,996 53
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The residue of the road *west of the river*, should be put under contract, and the work on the whole, be commenced by the first of March next, and be prosecuted in the same manner, as that *east* of the river has been heretofore conducted, viz., by pushing the heavier sections, as far as is consistent with a prudent economy, and the lighter ones only in such manner, as that the whole may be completed together, it is estimated that there will be required west of the river, by March 1, 1840, for graduation, masonry, bridging and engineering department for the *whole line*, and for superstructure and buildings for stations, *between Pittsfield and the State line*, the sum of 778,770 64

Remaining on hand, March 1, 1840, 217,225 89

The whole, including the lighter work, is advanced to completion as early as is practicable, consistently with economy, there will be required by March 1, 1840, an expenditure of 898,770 64

Remaining on hand at that date 97,225 89

Both of these latter estimates are based upon the supposition that the contracts to be now made for grading the 28 miles, must be made, on condition that the Corporation shall have a right to suspend the work the winter of 1840, if farther funds are not provided for completing the same. And it is supposed, that as favorable terms cannot be had for such contracts, as would be obtained, if no such contingency were provided for.

And it may not be amiss to add, also, that the contracts already made for grading the summit Division, being made when adequate

funds were secured for their completion, may, if those furnished in part to the grading of the 28 miles, be suspended the winter of 1840, if additional funds are not then provided.

It should be borne in mind also, that, as before stated, the 28 miles east of Henry's, can probably be graded ready for the superstructure, by July 1, 1840. And to provide against serious delay in opening that part of the road, the iron and other materials for the superstructure, and the engines and cars should be contracted for prior to the 1st of July, 1840. These, upon the estimate heretofore made, will cost about . . .

And if it should be found that the summit Division can also be ready for the rails by July, 1840, provision should be made for the superstructure, and the engines and cars for the 23 miles between Henry's and Pittsfield before January 1, 1840—which will require about more.

Under the act of February last, the Treasurer has received the scrip of the State amounting to the sum of 9  
Of this, there had been sold in England, at the date of the last advices, the amount of 5  
at an advance above the par value of from 2 1-2 to 4 per cent.

And the Treasurer of the Corporation has paid over to the Treasurer of the Commonwealth, the sum of 4  
on account of monies received by him, from the premium on sales of scrip, and the proceeds of Exchange; to be, by the Treasurer of the Commonwealth, placed at interest, as a part of the *Sinking Fund*, created by said act, for the final redemption of the scrip.

The whole scrip thus far issued, is made payable—both principal and interest—at the House of Baring, Brothers & Co., in London, who are constituted the agents of the Corporation therefor.

Receipts and Expenditures of the Corporation for the year past,  
 stated by the Treasurer, are as follows, viz. :

## RECEIPTS.

on hand, as per last Report, January 3, 1838,	\$69,889 67
since received on 3d Instalment,	11,875 00
“ “ 4th “	68,870 00
since received on 5th Instalment,	112,270 00
“ “ 6th “	138,950 00
	<hr/>
	331,965 00
for sales of State scrip,	524,444 44
Exchange drawn against State scrip,	202,226 02
	<hr/>
	726,670 46
on account of Contingent Fund,	6,115 00
	<hr/>
	\$1,134,640 13

## EXPENDITURES.

paid for incidental expenses,	12,420 41
“ in Engineer department,	31,184 57
“ for Land damages,	67,322 11
“ Timber lands,	4,642 73
“ Construction, including Iron,	659,024 16
“ Depot lands,	2,286 00
“ Balance of Interest on loan,	3,704 59
e,	*354,055 56
	<hr/>
	1,134,640 13

balance consists of the following items :

of cash account,	262,346 07
in hands of William H. Swift,	
Resident Engineer,	6,788 84
in hands of George Bliss, Agent,	1,415 92
loaned on collateral,	81,000 00
receivable,	80,158 11
	<hr/>
	431,708 94
Exchange account or sinking fund,	76,868 05
ance due Baring, Brothers & Co. Liverpool,	785 33
	<hr/>
	77,653 38
	<hr/>
	\$354,055 56



*The following is a statement of the whole collections upon the six  
laid on the Stock, up to December 31st, 1838.*

No. of Assess- ment.	Time when Payable.	Amount of each Assessment.	Amount collect- ed.	A
First, .	Feb. 1, 1836,	150,000	150,000	
Second, .	April 15, 1836,	150,000	150,000	
Third, .	Jan. 16, 1837,	150,000	145,800	
Fourth, .	Sept. 25, 1837,	150,000	143,970	
Fifth, .	Nov. 15, 1837,	150,000	141,100	
Sixth, .	June 11, 1838,	150,000	139,670	
Totals, .	. .	900,000	870,600	

The undersigned, from their first connexion with this enter-  
prise, Directors, have felt that onerous duties and a heavy responsibility  
devolved upon them, in the care of so extended a work. In  
charge of these duties they have ever been solicitous to watch  
carefully, the expenditure of the funds of the Corporation. Their  
operations, which spread along a line of over 116 miles, necessarily  
require the employment of a considerable number of executive officers,  
directly or indirectly responsible to the Board. Through the agency  
of these officers the work is constructed, and all the disbursements  
made. And the Board have felt it to be incumbent upon them, from  
time to time, to examine their proceedings, scrutinize their accounts,  
ascertain the manner in which their several duties were discharged,  
and personally to inspect their operations, both in the office and  
in the field.

In furtherance of these objects, the Directors, in April last, directed  
Messrs. Hudson and Walker, two of their number, "a committee," to  
give instructions to make a personal examination and inspection of the  
several lines located westward of the river, and of the work upon  
the road, between Worcester and Springfield; to examine the manner  
of making contracts, and the terms of them, and the manner of  
fulfilment; to inquire into the nature and extent of the duties  
devolved upon the agent and his assistant, and upon the engineers and  
surveyors, and the manner in which those duties are performed.



ing an examination of the mode of doing business, and keeping  
 counts in the offices of the agent and engineers; to inquire into the  
 as procured for the track of the road, and the mode in which they  
 secured, and the propriety of the prices paid therefor; and, *in*  
*eral*, to make a thorough inspection of all the business and affairs  
 the corporation, connected with the location and construction of  
 the road."

After spending several days upon the line and in the offices, in the  
 charge of the various duties assigned to them, the Committee made  
 detailed report to the Directors, which was accepted by them. A  
 copy of that report is hereto annexed, for the inspection of those who  
 desire to know the extent of the examination, and the results at  
 which the Committee arrived.

The Directors have now made to the Legislature a full exposition of  
 the concerns of the corporation. The work which they have in  
 charge is one of great interest and importance; and they were there-  
 fore desirous that information respecting it should be spread freely  
 before the community. It is a *public* work—a work for posterity—  
 in the success of which the Commonwealth, and all its citizens,  
 have a deep and permanent interest. And it was therefore due to the  
 people, that its condition, its progress, its future prospects and wants,  
 and all its varied relations, should be frankly exhibited to the *representa-*  
*tives* of the people. Without their *further aid*, the work cannot  
 be completed. To their care and protection the undersigned com-  
 mends it. If the enterprise has merits, they have no doubt that these  
 will be duly appreciated. If it has wants, they have entire confidence  
 that they will be provided for.

ton, January 1, 1839.

THOMAS B. WALES,  
 EDMUND DWIGHT,  
 JOHN HENSHAW,  
 JOSIAH QUINCY, JR.  
 ROBERT RANTOUL, JR.  
 AMASA WALKER,  
 CHARLES HUDSON,  
 GEORGE BLISS,

} *Directors.*

FOLK, ss.—JAN. 16, 1839.

Sworn to, before me,

ELLIS GRAY LORING, *Justice of the Peace.*

*Statement, exhibiting the amount of Earth, Loose Rock, and Solid Rock excavated, the number of perches of Masonry (of 25 cubic feet) laid, and the number of feet of Bridging completed, between Worcester and Connecticut River, the 30th of November, 1838.*

No. of Division.	Earth. Cubic Yards.	Loose Rock. Cubic Yards.	Solid Rock. Cubic Yards.	Masonry. Perches.
1	772,196	4,321	69,012	15,894
2	545,500	1,019	16,025	9,308
3	252,176	3,638	1,710	8,633
4	857,555	7,645	14,504	10,128
Totals,	2,427,427	16,623	101,251	44,053

NOTE.—On the 1st Division, and on a part of the 2d, the contract was made for earth and loose rock together. The quantity of loose rock was not, therefore, be exhibited separately upon the sections which were contracted for in the above manner.

*Statement, exhibiting the amount of Earth, Loose Rock, and Solid Rock excavated, the number of perches of Masonry to be laid, and the number of feet of Bridging to be put up, between Worcester and Connecticut River, the 30th of November, 1838.*

No. of Division.	Earth. Cubic Yards.	Loose Rock. Cubic Yards.	Solid Rock. Cubic Yards.	Masonry. Perches.
1	112,800	.	6567	1500
2	12,554	.	106	700
3	58,194	900	1000	600
4	126,307	.	.	500
Totals,	309,825	900	7673	3300

*Schedule of Grades, East of Connecticut River.*

No. of Planes.	Inclination per mile—Feet.	Length of line on ea. Grade—Miles.	No. of Planes ascending—West.	No. of Planes descending—West.
5	Level.	2,071		
15	0 to 10 ft.	11,800		
11	10 to 20 ft.	8,317		
6	20 to 30 ft.	5,127		
8	30 to 40 ft.	11,375		
6	40 to 50 ft.	11,545		
1	51½ ft.	1,432		
1	60 ft.	2,500		
53	.	54,167	22	26

*Schedule of Curves, East of Connecticut River.*

No. of Curves.	Amount of Curvature—Degrees.	Length of Radius—Feet.
13	½ degree to 1 degree	11,459 to 5730
22	1 degree to 2 degrees	5730 to 2865
21	2 degrees to 3 degrees	2865 to 1910
4	3 degrees to 4 degrees	1910 to 1432
1	— 5 degrees	1146 —
61		

Whole length of straight line—about 35 miles.

*Schedules of Bridges, Culverts, and large Cuttings, and Embankments East of Connecticut River.*

There are 24 rail-road bridges, from 12 to 175 feet long,  
11 road and farm bridges,  
110 box and open culverts,  
8 arch culverts, from 8 to 35 feet span, and 1  
191 feet long.

Of the larger Cuttings, there are

10 of from 24 to 30 feet deep,  
9 " 30 to 35 "  
3 " 35 to 40 "  
1 each of 43, 47, 52 and 80 feet deep.

Of the larger Embankments, there are

9 of from 24 to 30 feet high,  
7 " 30 to 35 "  
2 of 38 "  
1 each of 48, 60, 63 and 63 feet high.



*Schedule of Distances by the line of the Rail-road, from the Passenger Station House, on the east side of Grafton Street, Worcester, (which is 812 feet west of the junction of the Boston and Worcester Rail-road,) to sundry places on the line.*

From the Passenger Station House, Worcester, to	Town.	Distance Miles.	Difference. Miles.	Distance between Stations. Miles.
to the Oxford road, . . . .	S. Leicester,	8 74		8 74
to Leicester and Charlton road (near Jones')	Charlton,	11 98	3 24	
to Summit, . . . .	do.	12 96	0 98	
to road by Hall's—Charlton station, .	do.	13 24	0 28	4 50
to road near Nathaniel Bemis, . .	Spencer,	17 50	4 26	
to Five Mile River, . . . .	E. Brookfield,	19 78	2 28	
to Brookfield road by Station land, .	S. Brookfield,	22 60	2 82	9 36
Do. do. . . .	W. Brookfield,	25 32	2 72	2 72
to road by do. . . .	Warren,	28 22	2 90	2 90
to Fair's saw mill, . . . .	do.	31 69	3 47	
to road by Alonzo V. Blanchard's, .	Palmer,	37 69	6 00	
to road by Palmer Station, (J. Shaw's),	do.	39 10	1 41	10 88
to road near Glover's store, . . .	Monson,	42 43	3 33	
to road by Station, (N. Stevens,) .	Wilbraham,	46 96	4 53	7 86
to crossing Chicopee Falls road, . .	Springfield,	51 93	4 97	
to station land, Main street, . . .	do.	53 98	2 05	7 02
to East Bank of Connecticut River, .	do.	54 16	0 18	
to road from junction of Boston and Worcester road, to Station House, Worcester, . . . .	.	0 15		
to whole length of line east of River, .	.	54 31		

WESTERN RAIL-ROAD OFFICE,  
Worcester July 24, 18

The Committee appointed by an order of the 12th of April to examine the mode of making contracts, and the terms of the manner of their fulfilment; to examine into the nature and extent of the duties devolving upon the agent and his assistants upon the engineers and their assistants, and the manner in which their duties are performed, including an examination of the mode of doing business and keeping accounts in the offices of the agent and engineers; to examine into the titles procured for the track of the road, and the mode in which they are secured, and the prices paid therefor; and in general, to make a thorough examination of all the business and affairs of the corporation connected with the location and construction of the road," ask leave to submit the following

## R E P O R T :

The Committee in the discharge of their duty, passed over from Worcester to the line of the State at West Stockbridge, viewed particularly all the principal points on the road; and found that the work was generally progressing as rapidly as is consistent with economy. The Committee turned their attention particularly to the duties devolving upon the agent and his assistant, and the engineers and his assistants. They called upon each of these officers, inspected their books, and inquired into the character and amount of the labors they had to perform; and the examination resulted in a full conviction that the labors were sufficient to employ those officers every hour of the time. As these duties were more numerous and arduous than the Committee had anticipated, they will give a brief description of them, and if the information is not needed by others, it will at least show that the Committee were somewhat particular in their inquiries.

The resident engineer it is well known, has the general supervision of the location and construction of the road. As a great part of his duties are connected with those of his assistants, we will not

them here ; believing that a description of the assistants' labors, of which pass under his inspection, will give some view of the amount of labor he has to perform.

The assistant engineers have each a division of the road of from ten to twenty miles in length. Their labors are various. As some of them have been upon the road from the first, we will begin with the surveys. After a general view of the country, a line is run, and the courses, distances, and altitudes are carefully noted. After these labors are performed, a computation is made, and if the result does not come within the limits prescribed by the resident engineer, the line is abandoned, and another is sought. Much time and labor are necessarily spent in fixing upon the approximate location. This is done with the strictest economy. A few days or even weeks spent in making a deep cut, a heavy embankment, a sharp curve, or a high grade, might save the corporation more than a year's salary of one of the officers. When the approximate location is agreed upon, the line is carefully run in stations of 100 feet, and the curves together with the rise and fall noted. In addition to this, cross sections are taken at every station, noting the rise and fall of the land on the right and left of the centre line, and if the surface of the ground changes frequently must between the stations, cross sections are taken at such intermediate points. The field labor being thus accomplished, the assistant makes a plan and profile of the route, ascertains the grade, from the cross sections, and estimates mathematically, the grade, the section, and the amount of cutting and filling, the number of cubic yards, and the amount of masonry. In some cases of course, two or three lines present themselves, so nearly equal in their claims, that a preference cannot be given until all this process is gone through with, and the results compared. Other examinations must be made out of the line of the road. If earth is to be wasted, reference must be had to the place for its deposit ; if earth is to be borrowed, a place must be selected from which to obtain it, swamps must be sounded and hills explored, and the nature of the soil and materials ascertained with as much accuracy as possible. After all these surveys and estimates are made, they are recorded by the assistant in a book kept for that purpose. The result of all these are submitted to the resident engineer ; and during the progress of the surveys, his advice and personal attendance are frequently required.

When the location is fixed, and the road put under contract, the assistants have to go over their divisions ranging in length from ten to



twenty miles, and mark the number of feet of cut or fill at each station, and also erect the slope stakes. The work is commenced at the centre stakes of course removed on that part of the line, and the slope stakes, by design or accident, are frequently pulled up. If the stakes themselves, the workmen would be likely to get out of the line below the grade. It is necessary therefore, that the assistant or one under him, should be upon the ground almost daily. These stakes must be frequently replaced, and the centres run.

Another important item in the construction of the road, and a great labor of the assistants, is the masonry. This requires almost constant inspection. The value of masonry must depend very much upon the character of the materials used; and in the absence of an inspection the contractor might use improper materials; and inspection here is necessary during the progress of the work, as a fraud could in many cases, be detected after the work is completed.

The labors of the assistants in relation to the masonry is heightened by the fact, that the foundation for all bridges and principal cuts is not included in the contracts, but is laid by the day. This renders the presence of the assistant the more important, as he has not only to inspect the work, but to see that the hands labor industriously. Another important field of labor for the assistants is this: the contracts for the grading are made for a specific sum for excavating every yard of earth; another and greater sum for every yard of loose rock, and a still greater sum for every yard of solid rock. All rocks of a certain size are, by the contract, deemed to be earth; from that size up to another given size, they are deemed to be loose rock, and above that, solid rock. In some sections, where rocks abound, the presence of the assistant is required almost hourly, to examine the stone and decide to which particular class they belong; otherwise the contractor might pass off for loose rock what ought to be considered earth, and for solid rock what should be deemed loose rock.

In the progress of the work, unforeseen obstacles frequently present themselves, rendering it expedient to change the grade or the location of the road. This requires the time and the attention of the assistant. There is also a class of periodical labors which devolve upon these officers. The contractors are paid every month; this renders it necessary that the work done on the whole division should be measured and estimated once in thirty days, and the amount paid upon the same, and transmitted to the office of the resident engineer. This involves a large amount of labor upon the assistants in the short space of

a. Add to this, when the work is completed the whole is accurately measured and estimated, section by section, to furnish the basis for the final settlement with the contractors.

There is also a large amount of office labors to be performed. Accurate plans must be made to file with the County Commissioners; every land owner has a right by statute to demand a plan of his land before it is entered upon. This is furnished by the assistant. The agent requires a plan or an accurate description of the location by which to frame his deeds and settle the land damages. The working plans for the masonry form a considerable item. There is another branch of labor connected with the masonry. The contractors took the stone where they could get them easiest, without any reference to the cost to the Corporation for damages to land. This system entailed upon the assistants the labor of settling the damages for taking stone. This system is now generally abandoned, and it is made the duty of the assistant to select the stone and negotiate with the land owners for the damages. In some cases of land damages it is found expedient to buy the farm or lot crossed by the road; in such cases, the assistant has to survey the land and make out a plan for the agent. These labors, minute as some of them may appear, cannot well be dispensed with economically. In various respects, in ways almost innumerable, the officers can save the Corporation more than the amount of their salaries.

Take a section where there is, by estimate, an excess of excavation over the embankment of, say, 500 yards. The contractor might be induced for his interest to waste this amount before he completed his embankment. But it may so happen that some part of the earth under the embankment may give way, and let the embankment settle, and the supposed excess may be needed to bring it up to grade. An engineer on the spot, seeing an indication in the earth under the embankment to give way, will immediately arrest the wasting of earth, and order it to be carried and placed upon the embankment which is sinking. In this way the Corporation may be saved from the charge of the damages, by borrowing earth out of the line of the road, and escape from land damages by wasting earth upon it; and also from the expense of paying for double excavation.

Of nearly the same character is another saving that may be made by constant inspection of the assistant. Different kinds of earth shrink at different ratios by being removed. This shrinkage may vary the supposed balance of cut and fill so as to affect the borrowing or wasting. The assistant, by observing the nature of the soil, may give

directions to the contractor, so as to have the excavation and embankment balance each other; and thus save the expense of wasting earth by borrowing. Whereas the contractor, whose interest is different from that of the Corporation, might answer his end better by borrowing earth from one place and wasting in another, though it might subject the Corporation to an extra charge.

These labors, or something like them, devolve upon each assistant engineer or master of a division. The assistants have generally four or five men under them, who aid them in the performance of their labors, and they receive from one to two dollars per day for their services, and pay for themselves. We have remarked before, what every one knows, that the Resident Engineer has the general supervision of the whole road. All the business of the Assistant Engineers passes under his inspection, and all difficult parts of the road receive his personal examination. He is also liable to be called unexpectedly to distant parts of the road. When any thing of a difficult character presents itself, the Assistant Engineer immediately calls upon the Resident Engineer, who must immediately either in person, or by letter, give the information needed. The Resident Engineer is also associated with the agent in putting the road under contract, and in obtaining the necessary materials for building the superstructure, &c. Perhaps we cannot better describe the labors of the Resident Engineer in this respect, than by giving a brief account of the manner in which the contracts for grading are made. The road is divided into sections, so as to have the excavations and embankments balance each other as nearly as practicable. The Engineer advertises for proposals for each section. When the proposals come in, they are all arranged and recorded by the Engineer. If the proposals are reasonable, they close with the lowest responsible bidder. If the proposals are not reasonably low in any case, that section is reserved for a future contract. When the proposals are closed, a written agreement is entered into, and signed and delivered in the presence of witnesses, by which the Corporation, by their agent, agrees to pay so much per cubic yard for excavating earth, so much for soft rock, so much for solid rock, and so much for masonry, &c. and the contractor agrees on his part to do the work in a given time, to the acceptance of the Engineer. One distinguishing feature of these instruments is, that the Engineer has almost unlimited power over the contract, and may change, modify or annul it, at his pleasure.

This throws great responsibility upon the Engineer, together with no small share of labor. All the money expended for the grading



l masonry is disbursed by the Engineer. The oversight of more than 100 miles of road, and the labors connected therewith, must necessarily employ the time of one individual. The manner in which contractors are paid, is attended with some extra labor. We have before said, that the assistants measure and estimate the amount of work done on each section every month. These returns are made to the Engineer, and from these data the monthly pay is made out; but to ensure the completion of the work, or to save harmless the Corporation in case of failure, a certain amount is retained by the Engineer. There is necessarily a large amount of clerical labor devolving upon the Engineer. Correspondence must be had, copies of which are retained in his office; accounts of all money received and disbursed must consume considerable time. His extended line of road requires him frequently to be from home, and hence much time must be expended in travelling.

The Committee also inquired into the character and amount of labor devolving upon the agent and his assistant. Their principal duties relate to land damages, though these are not by any means their only ones. The general plan of operations in relation to land damages is

The agent goes over the line and ascertains the names of the land owners, and obtains a release of the land in all cases where it is practicable before the location is made. But in most cases this cannot be done; in which event the agent goes over the road, measures the width of each man's land on the line of the road, ascertains the width of the location at all parts, and then commences a negotiation with the land owner. This requires much time and patience. The first attempts to negotiate generally prove abortive. Land owners, for the most part, are unwilling that their farms or lots should be cut up, and generally so happens that the road, in their estimation, crosses their land just where they are the most unwilling to part with it. It is a subject to them; they are not prepared to act then; they want a little time to consider of it—to see how they are to be affected by the location, or to ascertain what damages their neighbor obtains. Their tale of grievances must be listened to; the descent of the property, the fertility of the soil, the richness of the corporation, the arbitrary character of the law by which the Corporation are authorized to take the land of the citizen without his consent—all these and many other things must be related, and heard too, with a great degree of patience; and then, after spending an hour or two, the agent is told that he will call again at that time; if he will call again he will talk with him on the subject. Or, if terms are offered by the land owner, they are gen-

erally so high that they cannot be complied with. Visit after visit generally be made before the negotiation can be closed.

In this way much time must be spent, and but little is brought forward. If some are more reasonable and agree at once, others are more unreasonable and will not agree at all. In such cases, after a negotiation, the County Commissioners must be called upon to pay the damages; this, perhaps, is followed by an appeal to a Jury. In such cases the Agent, or some one authorized by him, must be present and to present the case to the Commissioners or Jury. It frequently happens, that the owner lives at a distance, or that the land is held in common by a number of individuals, or is in the hands of Indians, or Administrators, or Trustees, all of which circumstances impede the negotiation, and increase the labor of the Agent.

Another no inconsiderable amount of labor connected with this business, relates to the titles of the land. The Agent, in all such cases, examines the records to see if the land is free from incumbrances, and to ascertain in whom the fee is. After he is satisfied of the facts, and the negotiation is closed, the Agent makes out a deed for the land taken, and has it recorded in the Registry of Deeds of the County where the land is situated. These deeds are very minute, describing the land by the foot, and occupy two or three times the space of ordinary Deeds.

This branch of the Agent's business is of the most perplexing character, and must necessarily consume much time. It is also important to the Corporation, that it should be managed with great caution and prudence, and, consequently, with much delay. The saving of time by the Corporation of a cattle culvert, or a farm bridge, will generally be more than compensated for by the weeks of time spent in negotiation. And experience has shown, that negotiations, though protracted, are to be preferred on the ground of economy, to the calling out of the Commissioners.

The crossing of highways, in some cases, imposes considerable labor upon the Agent. When the highway is to be raised or lowered, or the location to be changed, the Selectmen or Commissioners are to be called upon, and the case is to be decided after a hearing of the parties. The Agent performs the professional duties for the Corporation,—appearing before the Commissioners, Juries, and the like. The negotiation which has been going on in relation to the Pontoosuc Treaty has occupied some of the Agent's time. He also, as we have already remarked, makes in connection with the Engineer, all the contracts for the grading of the road, and the purchase of lumber for bridges, and the superstructure of the road. The contracts for lumber for

cases, been made at a distance. The inhabitants on the line of road, supposing the Corporation to be within their power, have generally, it is thought, been somewhat exorbitant in their demands of lumber. This has subjected the Agent to the necessity of seeking lumber at a distance. He has, also, in several cases, purchased land and wood standing thereon, for the purpose of obtaining lumber cheaper than it could be bought of individuals.

The Office labors of the Agent are very considerable. His correspondence must be somewhat extensive, all of which is a matter of record; the receipts and expenditures of the department, must all be recorded; abstracts of all contracts are entered in a book kept for that purpose, and copies of them are furnished to the Engineer and to his Assistant on the part of the road to which they relate. These, together with the deeds, releases, &c., make a large amount of clerical labor. The Committee examined the books and papers in the Offices of all the Departments, and found them neatly, and, as far as they could judge from a very cursory examination, correctly kept.

On the whole, the Committee are fully satisfied, that there is business enough in each of the Departments, to engross the whole time of the several Officers employed, and in the Agent's Department, extra labor, besides, is indispensable.

How far the Committee are aware, from any thing they could discover, or from others, that any of these Officers were neglectful of their duties, they were, on the contrary, pleased with the active business

displayed by the different Officers. And, from inquiries made of individuals on the line of the road, they learned that there was an impression among those who had done business with him, that the Agent was active and shrewd, and managed the business of his Department very well for the Corporation. The Committee believe, from what they have been able to discover, that they can congratulate the Board and Corporation, upon their good fortune in selecting wise, judicious and faithful Officers in all the Departments of their business.

One branch of the order required the Committee to examine the manner of the fulfilment of contracts. We are not exactly aware of the extent of these instructions. We have already stated, that the contracts for grading and masonry, are to be fulfilled to the acceptance of the Engineer. The contracts for sleepers, &c., require that they should be of certain kinds of wood, and of a given size; the contracts for land to be fulfilled by the giving of a deed. If this is what was contemplated by the order, we have complied with its provisions. But if it is intended that the Committee should examine, personally, the work in the one

case, and the materials in the other, they have not done it to a considerable extent; nor can it be done until the work is accomplished and the materials delivered. Wherever the work was finished it appeared to be of the most substantial kind, and executed in a good manner.

Having stated thus minutely the result of their inquiries, the committee submit the whole subject to the consideration of the Board.

CHARLES HUDSON, }  
AMASA WALKER, } *Committee*

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ERRATA.—Page 54, line 1, for "*divested*" read "*diverted*,"—same line 10, for "*July*" read "*January*."



FIRST REPORT  
OF THE  
WEST STOCKBRIDGE RAIL-ROAD  
CORPORATION.

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*To the Honorable the Legislature of the State of Massachusetts :*

The Directors of the West Stockbridge Rail-road Corporation do hereby make their First Report of their acts and doings, under their act of incorporation, so far as their peculiar position will admit.

This company was organized, under its charter, on the twenty-sixth of April, 1838, and, supposing that your honorable body might give permission to unite our stock with that of the Hudson and Berkshire Rail-road, and that this union would be effected within one year from the time of our first organization, it was expected that it would be necessary to render any report at this time. Our charter was obtained for the purpose of extending the Hudson and Berkshire Railroad to the village of West Stockbridge, so as to complete the line of communication from the Hudson river to the county of Berkshire. From the first, it was apparent to all that the West Stockbridge Railroad, in order to be profitable to the stockholders and useful to the public, must ultimately be united with the Hudson and Berkshire road, and resolutions were early passed by both boards declaratory of the intention of the companies to form this union, so soon as permission should be obtained from your honorable body. We have consequently

purchased no cars, engines, or other appurtenances for our use, but have permitted the Hudson and Berkshire Corporation to use the engines and cars over it, without any definite arrangement for their use, except that the whole matter stands referred for the consideration of a committee from both boards of directors, when permission is given to unite the stocks. We entertain the hope, that your honorable body will consider the above *reasons* why a more detailed report cannot be rendered as satisfactory.

The whole amount of our subscription in Berkshire county, is . . . . . \$

A bond obligating the Hudson and Berkshire R. R. Co. to subscribe . . . . . \$

The directors have received from the Berkshire subscription, . . . . . \$  
Advanced by the directors, . . . . . \$

The Hudson and Berkshire Rail-road Corporation have completed the whole superstructure, and have laid down the same. They have also commenced a stone building, now nearly roofed in, measuring 100 by 50, intended for the depot. They have, in addition, commenced grading in some low grounds around the eastern terminus of the road, in order to render it more commodious.

No account has been rendered by the Hudson and Berkshire Rail-road Corporation of the expense of these several operations, and we can therefore give no statement in regard to it.

We have expended for grading and bridges, . . . . . \$  
“ “ for land damages, fencing, engineering, and incidental charges, . . . . . \$

The length of the road is 2 3-4 miles nearly. The road is graded to a width of 14 feet at top. The superstructure consists of a subsill, 10 in. by 4 in.; second, of ties about 6 in. by 7 in.; third, of rails 6 in. square; fourth, the iron bar, 2 1-2 in. wide by 1/2 inch thick. The timber is principally chesnut, the product of the surrounding country.

chief engineer, who resides at Hudson, has, within a few days, the maps and plans belonging to the company, and we cannot, at this time, comply with the statute in regard to the planes. The road, however, is nearly level, and there is probably with a radius less than two thousand feet.

which is respectfully submitted.

CHA'S B. BOYNTON,  
ERASTUS CROCKER,  
DANIEL SPENCER, Jr.  
SYLVESTER SPENCER,  
HUBBARD FOX.

*Stockbridge, January 28, 1839.*

—  
RN, ss.

*January 29th, 1839.*

Sworn to before me,

ROBBINS KELLOGG, *Justice of the Peace.*

The following is a list of the names of the persons who have been elected to the office of the Board of Directors of the City of New York for the year 1877-78.

JOHN A. BOYNTON  
EDWARD CHASE  
DAVID W. HARRIS  
WILLIAM H. HARRIS  
JOHN H. HARRIS

JOHN H. HARRIS

JOHN H. HARRIS

JOHN H. HARRIS

JOHN H. HARRIS











## SENATE....No. 32.

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### Commonwealth of Massachusetts.

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IN SENATE, Feb. 5, 1839.

*Ordered*, That the Adjutant and Acting Quarter Master General be directed to lay before the Senate, a particular statement of all the expenses which have accrued to the Commonwealth, for the last three years, ending December, 1838, in relation to the Departments of the Adjutant and Acting Quarter Master General, and the Militia, stating under distinct heads, the salaries and compensation of the Adjutant and Quarter Master General, his clerks, and all others employed by him, or receiving compensation for any service or duties performed in relation to the Militia, Military Stores, or otherwise, over which his Department has control or charge, and all other contingencies of his office,—the expenses of Courts Martial, Courts of Inquiry, and all other military boards; allowances to Adjutants, Brigade Majors, and all other staff officers; allowance for Hauling

## 2 ADJT. GENERAL'S STATEMENT.

Artillery ; the expense for powder, musical instruments, standards, and all other articles furnished for the Militia, at the charge of the Commonwealth : other expenses of his several Departments.

Attest,

CHARLES CALHOUN, C

ADJUTANT GENERAL'S OFFICE, }  
Boston, Feb. 14, 1839. }

the HON. MYRON LAWRENCE,  
*President of the Senate.*

In compliance with the foregoing order of the Senate,  
the undersigned has the honor to transmit the accompa-  
nying tabular statement of all the expenses which have  
incurred to the Commonwealth, in relation to the Adju-  
tant and Acting Quarter Master General's Department,  
for the three years ending 31st December, 1838.

With the highest respect,

Your most obedient servant,

H. A. S. DEARBORN,

*Adj't. and Act'g Q. M. General.*

#### 4 ADJ'T. GENERAL'S STATEMENT. [Fe

STATEMENT of all the Expenses which have accrued to the wealth, in relation to the Adjutant General and Acting Master General's Department, including his Salary and expenses of Courts Martial, Hauling Artillery, supplies of and other articles to Artillery Corps, Colors, and Musical Instruments, Salutes, and Escorts, allowances to Staff Officers, Stationary, and Contingencies,—for the three years ending December, 1838.

	1836.	1837.
Adj't and Act'g Qr. M. General—		
yearly salary, - - - - - \$1500	\$1,500 00	\$1,500 00
One permanent Clerk, yearly sal. 1200	1,200 00	1,200 00
Military Store Keeper, " 800	800 00	800 00
Keeper of Camb. Arsenal, " 52	52 00	52 00
Extra Clerk hire in Adj. General's office,	265 00	- - -
Printing of Militia Laws and Blanks, -	1,079 46	789 21
Military Blank Books and Stationary, -	104 87	43 06
Repairs of Gun Houses, - - - - -	397 11	517 17
" " Field Pieces and Carriages,	201 25	519 44
" " Artillery Harness, - - - -	221 87	24 50
Supply of Powder, Implements and		
Equipments to Artillery Corps, -	1,060 90	679 40
Colors and Musical Instruments, - -	406 60	546 00
Salutes and Escorts, - - - - -	581 00	926 57
Repairs and contingencies at Arsenal,	393 29	231 12
Division Inspectors, - - - - -	- - -	20 06
Aids de Camp to Major Generals. -	62 06	42 67
Brigade Majors, - - - - -	372 51	370 20
Adjutants, - - - - -	953 79	1,135 85
Hauling Artillery, - - - - -	812 86	732 98
Courts Martial, - - - - -	805 93	235 08
Special Military Service, - - - -	- - -	32 62
	\$11,270 50	\$10,397 93

NOTE.—The accounts of Staff Officers, for the year 1838, have not all been



## SENATE.....No. 33.

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Reported by the Committee on Mercantile Affairs and Insurance.]

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Commonwealth of Massachusetts.

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the Year One Thousand Eight Hundred and Thirty-  
Nine.

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### AN ACT

in Addition to "an Act to Incorporate the Mutual Fire  
Insurance Company in Salem."

*BE it enacted by the Senate and House of Represen-  
tatives, in General Court assembled, and by the authority  
of the same, as follows :*

That every policy made by such corporation, shall  
of itself create a lien on the interest of the person in-  
sured in any personal property thereby insured, for  
securing the payment of his deposit note, and any  
sums for which he may be assessed in consequence of  
effecting such policy : *provided*, the extent of such li-  
ability, and the intention of the corporation to rely

## 2 MUTUAL FIRE INS. CO. SALEM. [F

8 upon such lien, shall be set forth in the p  
9 that upon the expiration of the policy, or  
10 alienation of the property to a bona fide p  
11 the lien shall cease, unless such policy shall  
12 tinued in force by consent of the purchaser.



NATE.....

.....No. 34.

---

**REPORT AND OPINION**  
**OF THE**  
**ATTORNEY GENERAL**  
**ON THE SUBJECT OF**  
**E EXPENSES OF CRIMINAL JUSTICE**  
**MADE TO**  
**T H E S E N A T E ,**

*Under an Order passed on the 15th January, 1839.*

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NEW YORK

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ATTORNEY GENERAL'S OFFICE,  
*February, 1839.* }

MR. MYRON LAWRENCE,  
*President of the Senate.*

In obedience to the order of the Honorable Senate, of  
15th January last, I herewith forward to you, the re-  
sponse and opinion required, and am,

With great respect,

Your most obedient servant,

JAMES T. AUSTIN,  
*Attorney General.*

#### 4 EXPENSES OF CRIMINAL JUSTICE.

### Commonwealth of Massachusetts

IN SENATE, Jan. 15, 1881

*Ordered,* That the Attorney General report to the Senate, what are the causes of the increase of the expenses paid to the County Treasurers," as stated in his annual report; and by what means, in his opinion, the tendency to further increase may be prevented.

Attest,

CHARLES CALHOUN, C

# REPORT AND OPINION

OF THE

ATTORNEY GENERAL

ON THE

EXPENSES OF CRIMINAL JUSTICE.

---

In the annual Report, to which reference is made in the foregoing Order, I had the honor to state, that the balances paid by the Commonwealth to the County Treasurers for the expenses of criminal prosecutions, amounted in the year 1838, to nearly or quite SEVENTY THOUSAND DOLLARS.

The Treasurer's official statement, published since that report was prepared, makes the exact aggregate to be \$3,680 75. But as a sum of \$485 00 which was expended within the year is suspended for further consideration, and another of \$1052 was allowed and a warrant issued for its payment, but is not included in the statement because the money due upon the warrant had not then been called for, it is found, that the charges pre-estimated during the year rather exceed the sum at which they were estimated.

It is found also by reference to the printed documents of the Legislature, that the amount of these balances varied in several years is as follows :



## 6 EXPENSES OF CRIMINAL JUSTICE.

In the year 1825	- - - - -	\$17,247
1831	- - - - -	\$38,723
1832	- - - - -	\$28,156
1833*	- - - - -	\$31,591
1838	- - - - -	\$68,680

Notwithstanding the action of the government which had a favorable influence in diminishing charges, there appears by this statement to be a progressive accumulation of them.

In considering the subject, however, it is to be understood that the sums *paid* within a year, are not the same that *accrue* within the same period. Some time before the accounts of the County Treasurers, when they first appear, are presented at the Treasurer of the Commonwealth, and then they are not made up for long periods or for the same precise length of time. But as they are brought into one mass at the end of the current year in the books of the Treasurer of the Commonwealth, *and nowhere else*, the remarks I shall have the honor to submit in obedience to the order of the honorable Senate, will have reference to the annual statements, which are believed, for all the purposes of this inquiry, to be sufficiently particular.

To have a correct idea of what is meant by the "sums paid the County Treasurers," it is necessary to understand that certain charges, accruing in the administration of criminal justice, are paid by the Treasurers of the respective Counties in which they occur, and are stated by them in accounts presented to the Commonwealth for payment, and that the County Treasurers also have certain sums for which they are required to give

\* Erroneously printed 1831 on 31st page of the Attorney General's Annual Report.

the Commonwealth, which are also stated in their accounts, and that the difference between those two sums constitutes the "*Balances*," which added together form the aggregate of the large amount which is annually paid to the state.

The accounts consist of various distinct heads of charges and credits, and it is obvious, therefore, that whatever increases the former or diminishes the latter equally tends to increase the balance to be paid.

For the purpose of presenting the several heads of debit and credit with more distinctness, I have prepared an analysis of the accounts in a tabular form for the years 1830 and 1838.

The exhibit is intended to present a general view of the subject, without aiming at the accuracy of detail which would be necessary in the auditing and settling of the account. In making it, small sums and fractions have been rejected, and a round number taken nearest to the result. To have attempted to be more particular would have been unnecessary for the purpose intended, and could not have been accomplished without more assistance than is at my command, and more time than my official duties would permit.

In addition to these tables are added "a condensed statement of balances received by the County of Suffolk from the Commonwealth of Massachusetts," for several different years, and a "tabular statement of debit and credit between the Commonwealth of Massachusetts and the County of Suffolk," for the years 1825, 1832, and 1837, for the purpose of shewing the progress of the charges on the Commonwealth's Treasury at distinct and important periods of time.

The accounts of the County of Suffolk are selected over others, only because they were more within my



## 8 EXPENSES OF CRIMINAL JUSTICE. [F

reach. So far as I have been able to compare the accounts in other Counties, they present a fair view of the subject in every part of the Commonwealth except in the County of Worcester only, to which particular reference is hereinafter made.

SUMS CHARGED.			SUMS CREDITED.							
Judicial Districts.	Countries.	Expenses of Jails & Houses of Correction.	Costs of Courts.	Commissions of County Treas.	Total.	Licenses to Retailers, &c.	Fees of Common Pleas.	Justices' fees, fines, &c.	Uncollected Fees.	Exact balance from the Treasurers' Accounts.
Suffolk,	Suffolk,	\$2301	\$13,183	\$716	\$16,200	\$2110	\$2129	\$3992	\$164	\$7807 80
Northern,	Essex,	1201	7302	425	9528	1350	855	669	68	6583 11
"	Middlesex,	1027	3716	208	4951	1017	1600	525	344	1464 99
Middle,	Worcester,	1245	4004	232	5481	819	2340	679	65	1578 25
"	Norfolk,	315	2069	111	2495	356	538	239	11	1351 80
Western,	Hampshire,	169	1419	75	1653	230	669	658	8	89 12
"	Franklin,	113	792	42	1018	222	348	258	15	106 39
"	Hampden,	580	2228	126	2944	297	733	155	.	1769 80
"	Berkshire,	1389	2408	169	3966	499	1195	317	73	1881 33
Southern,	Plymouth,	314	2650	142	3106	298	298	122	.	2444 98
"	Dukes,	22	90	5	117	79	11	67	.	43 33
"	Barnstable,	160	759	42	961	198	113	13	.	638 42
"	Bristol,	701	6179	327	7107	459	1320	318	77	4051 47
"	Nantucket,	.	651	32	683	71	133	2	.	477 37
Approximated Totals,		9537	48,060	2652	60,200	8005	12,231	8014	822	30,230 16
Exact Totals from the Treasurers' Books,		\$9600 04	\$48,061 34	\$2653 43	\$60,315 10	\$8007 12	\$12,234 05	\$8019 80	\$826 00	\$30,230 16

# 10 EXPENSES OF CRIMINAL JUSTICE

*Analysis of Balances paid to County Treasurers in 1838.*

JUDICIAL DISTRICTS.	COUNTIES.	Expense of Jails.	Costs of Courts.	Total.	Credits.	Balance.
Suffolk,	Suffolk,	\$6000	\$21,000	\$27,000	\$8000	\$19,000
Northern,	Essex,	2600	8300	10,900	900	10,000
"	Middlesex,	3600	11,300	14,900	3400	11,500
Middle,	Worcester,	.	6500	6500	800	5700
"	Norfolk,	450	3000	3450	400	3050
Western,	Hampshire,	350	700	1050	100	950
"	Franklin,	.	575	575	45	530
"	Hampden,	450	2100	2550	150	2400
"	Berkshire,	400	2500	2900	250	2650
Southern,	Plymouth,	200	1800	2000	150	1850
"	Dukes,	45	80	125	35	90
"	Barnstable,	100	400	500	75	425
"	Bristol,	3000	9000	12,000	1700	10,300
"	Nantucket,	25	300	325	25	300

*A condensed Statement of "Balances" due County of Suffolk from  
Commonwealth of Massachusetts.*

Jan. 1825,	Payments, \$7079 86 Receipts, 4650 60		\$2429 26	Bal. received March, 1835.
		Bal. 1824,	6574 62	
June, 1832,	Payments, 5351 45 Receipts, 1753 99		3597 46	Bal. received July 13, 1832.
Jan. 1833,	Payments, 10,317 16 Receipts, 5654 88		4662 28	Bal. received March 11, 1833.
		Bal. 1832,	8259 74	
June, 1833,	Payments, 8516 10 Receipts, 3940 22		4575 88	Bal. received July 3, 1833.
Jan. 1834,	Payments, 13,919 15 Receipts, 4841 21		9077 94	Bal. received March 15, 1834.
		Bal. 1833,	13,653 82	
June, 1834,	Payments, 7930 36 Receipts, 3824 09		4106 27	Bal. received June 25, 1834.
Jan. 1835,	Payments, 15,894 33 Receipts, 4280 00		11,614 33	Bal. received March 26, 1835.
		Bal. 1834,	15,720 60	
June, 1835,	Payments, 7193 82 Receipts, 3789 04		3404 78	Bal. received July 31, 1835.
Jan. 1836,	Payments, 9737 24 Receipts, 4256 16		5481 08	Bal. received April 14, 1836.
		Bal. 1835,	8886 86	
June, 1836,	Payments, 15,468 69 Receipts, 4216 43		11,252 26	Bal. received July 15, 1836.
Jan. 1837,	Payments, 12,938 24 Receipts, 3513 88		9 24 56	Bal. received April 22, 1837.
		Bal. 1836,	20,676 62	
June, 1837,	Payments, 8232 16 Receipts, 3100 14		5132 02	Bal. received July 17, 1837.
Jan. 1838,	Payments, 13,045 09 Receipts, 4457 26		8577 83	Bal. received April 21, 1838.
		Bal. 1837,	13,709 85	



## 12 EXPENSES OF CRIMINAL JUSTICE

**JUNE 1, 1825.**

Particulars of charges vs. Commonwealth of Massachusetts by County of Suffolk  
in Criminal Prosecutions, viz. :

Municipal Court, 5 months to date, . . . . .	\$2790 69
Supreme do. . . . .	1726 54
5 months salary to County Attorney to date, . . . . .	500 00
Deduct for fees taxed at Sup. and Mun. Courts, 399 85 ———	100 15
Dieting prisoners in Jail, 6 months, . . . . .	707 18
Do. do. House of Correction, 6 months, . . . . .	300 79

Particulars of credits to Commonwealth of Massachusetts by County of Suffolk

Court fees, C. C. P. Jan. term, . . . . .	\$323 30
Fines and costs allowed by Mun. Court, 6 months, . . . . .	510 85
Do. do. Supreme do. March term, . . . . .	207 60
Do. do. Police do. 6 months, . . . . .	311 82
Fees allowed to witnesses by Mun. Court, from Jan. to May, 1822, and which have not been called for, . . . . .	234 61
Do. do. by Supreme Court, March term, 1822, do. . . . .	3 50
Forfeited recognizances, . . . . .	300 00

Balance received July, 1825, . . . . .

**JANUARY 1, 1826.**

Particulars of charges vs. Commonwealth of Massachusetts by County of Suffolk  
in Criminal Prosecutions, viz. :

Municipal Court, 7 months to date, . . . . .	\$4187 66
Supreme do. . . . .	196 74
7 months salary to County Attorney to date, . . . . .	700 00
Deduct fees taxed in Mun. Court, 7 terms, . . . . .	475 60 ———
Dieting prisoners in Jail, 6 months, . . . . .	579 89
Do. do. House of Correction, . . . . .	547 38

Particulars of credits to Commonwealth of Massachusetts by County of Suffolk

Court fees, C. C. P. April, July and October term, . . . . .	\$1036 25
Fines and costs allowed by Mun. Court, 6 months, . . . . .	457 96
Do. do. Police do. 6 months, . . . . .	300 83
Fees allowed to witnesses by Mun. Court, from June to December, 1822, inclusive, and which have not been called for, . . . . .	239 60
Do. do. by Supreme Court, do. . . . .	4 00
Licenses to 602 Victuallers, . . . . .	2391 84
Forfeited recognizances, . . . . .	851 85

Balance received March, 1826, . . . . .

\$3733 67  
453 74

Balance, 1825, . . . . . \$4187 41

*Annual Statement of Debit and Credit, between the Commonwealth of  
Massachusetts and the County of Suffolk.*

DEBIT,	1835.	1836.	1837.
Municipal Court, . . . . .	6978 35	5147 66	8150 10
Supreme do. . . . .	1923 28	1998 83	2296 49
Police do. . . . .		5135 34	5289 12
County Attorney's salary,* . . . . .	324 55	480 10	1328 13
Prisoners in Jail, . . . . .	1287 07	1510 56	1181 14
do. House of Correction, . . . . .	848 17	684 27	2097 14
Assessors, . . . . .		699 85	935 13
	11,361 42	15,656 61	21,277 25

CREDIT,	1835.	1836.	1837.
Fees, C. C. P. . . . .	1359 55	1392 10	
and costs allowed by Municipal Court, . . . . .	968 81		
do. Supreme do. . . . .	207 60	1333 60	2530 34
do. Police do. . . . .	612 65	1723 67	2677 82
plus fees Municipal Court from Clerk,† . . . . .			88 00
owed to witnesses which have not been . . . . .			
for, (outlawed,) . . . . .	481 71	188 00	156 59
and recognizances, . . . . .	1151 85	1448 90	2114 65
to Victuallers, . . . . .	2391 84		
	7174 01	6086 27	7567 40

Amount of Debits, . . . . .	48,295 28
Amount of Credits, . . . . .	20,827 68
Balance, . . . . .	\$27,467 60

RECAPITULATION.

Balance received, 1825, . . . . .	\$4187 41
Balance received, . . . . .	\$3597 46
Do. do. . . . .	4662 28
	8259 74
Add for "Justice Court," fees settled . . . . .	
in 1833 account, . . . . .	1310 60
Balance, 1832, . . . . .	9570 34
Balance received, . . . . .	5132 02
Do. do. . . . .	8577 83
Balance, 1837, . . . . .	13,709 85
Balance as above, . . . . .	\$27,467 60

\* Excess of Salary over legal fees.

† Half excess of fees over Salary.

## 14 EXPENSES OF CRIMINAL JUSTICE

The balances for the year 1830, as appears first of the foregoing tables, are made by the Commonwealth :

1st. With the expense of maintaining prisoners either before trial, or after conviction and judgment.

2d. With the expense due from the Commonwealth for maintaining prisoners in a House of Correction, under sentence of a competent court.

3d. With costs of judicial proceedings in criminal cases under this head are included :

1st. Costs taxed by Police Courts and Justices of the Peace.

2d. Costs taxed in Courts of Record, as well as examinations by a Grand Jury, as for trials at Bar.

3d. Certain costs which not being incident to any particular case alone, are included in what is usually called "*the general bill.*"

4th. Commissions allowed by law to Court Officers and Jurors on their disbursements.

These are the heads of charges. Credit for the same is given for money received by the several Towns.

1st. For licences to taverners and retailers.

2d. For sums received for fees in the Courts of Common Pleas.

3d. For fees of the Commonwealth's Attorneys, for fines and forfeited recognizances, including also costs assessed upon and paid by convicted parties.

4th. For witnesses fees in the hands of the Town Treasurers unclaimed for two years.

The table for 1838 shows the same subject as appeared during that year.

These accounts and the balances then struck are conformable to the law as it existed at those several



The difference between the two years will appear by a comparison of the one table with the other, by which it will be seen where the charges are larger and the credits less. Before proceeding to examine in detail each of these separate heads, I ask leave to submit a remark on the general policy of the government in reference to this subject, as evinced by its course of legislation.

The expenses of criminal justice have in the first instance always been and yet are paid, by the counties in which they occur. By the Act of 1791, Ch. 53, no part is chargeable to, or refunded by the Commonwealth, excepting only costs taxed by the Supreme Judicial Court. The residue was considered an appropriate county charge to be borne by the counties in their corporate capacity.

But while the Commonwealth assumed the eventual payment of a definite part of these expenses, it secured to itself certain funds for an indemnity, and it seems to have been its design that crime, or the cause of crime, should, as far as practicable, defray the expenses which were levied on the public. The object of the laws was to make prosecution and punishment speedy, efficient and comparatively cheap, without much regard to the convenience of an accused party, or the sufferings of a convicted one; and a departure from this system, adopted no doubt for wise and sufficient reasons and in many respects contrary to the honor of the liberal and humane spirit of the age, and the just expectations of an enlightened community, is necessarily attended with increased expenditure.

This change of system is to be perceived not more in the amelioration of the laws by positive enactment than in the disposition and manner in which they are admin-

## 16 EXPENSES OF CRIMINAL JUSTICE

istered, so that while the statutes may remain un-  
great changes are gradually but constantly effected  
their operation, by the irresistible agency of  
opinion.

Since the Statutes of 1817, Ch. 53,—1825, C  
and 1826, Ch. 73, which successively extended  
bility of the Commonwealth, all the costs of  
proceedings have been eventually payable by t  
monwealth, but some of the sources of revenue  
disbursement have been dried up. It will be co  
to reverse the usual order and examine the cred  
first instance.

In the accounts for 1830 are two sums, one o  
and the other of \$12,281, amounting together  
ty thousand two hundred and eighty-six dolla  
ited to the Commonwealth. Both these sum  
derived from sources from which nothing was ob  
the last year. As the difference between the ba  
the two periods is about forty thousand dollars,  
that difference is explained by this single cause.

The first item of \$8005 above mentioned is t  
formerly paid by taverners and retailers which ha  
The second item of \$12,281, is for fees of t  
of Common Pleas. Until the Act of 1820, Ch  
services of the Judges of the Court of Comm  
were paid by fees collected of suitors accordin  
fee table. These never passed through the han  
county treasurers or appeared in their accounts.  
statute above mentioned, a salary was establishe  
Judges, payable at the Treasury, and by the st  
that year, ch. 84, the several clerks of the court  
dered to collect the fees as usual and pay the

county treasurers by whom they were to be credited to the state.

The amount of salaries was \$7,500, and it was provided that the fees would be an indemnity to the Commonwealth. They proved to be more than an equivalent, as the business of the Courts increased, were a constantly increasing fund.

The Revised Statutes abolished the fees. Of course they were no longer receivable by the county treasurers, they disappeared from their accounts. The salaries still continue payable at the Treasury, without any specific fund to supply the original intended indemnity. Of the remaining sum of twenty thousand dollars, by which the balances of the last year exceed those of 1830, a part will be found under the heads of Jails and Houses of Correction, and a further part under the head of costs of court, and these would swell the balances beyond the amount actually paid, if they were not reduced by the increased fund derived from the credits made by the fees of the Commonwealth's Attornies, and by fines, penalties and forfeited recognisances. Thus the expenses of Jails and Houses of Correction

for 1838 were	.	.	.	.	\$17,220	
for 1830 "	.	.	.	.	9,600	
Excess for 1838 "	.	.	.	.		\$7,620
Costs of Court for 1838 "	.	.	.	.	\$67,500	
" for 1830 "	.	.	.	.	48,661	
Excess for 1838 "	.	.	.	.		19,439
Whole excess for 1838 over 1830,	.	.	.	.		\$27,059
Credits in 1838 were	.	.	.	.	\$16,030	
in 1830	{	not including licenses	}		8,841	
		and ct. fees.				
Excess of the above credits in 1838 over 1830,	.	.	.	.		\$7,191
Excess of balance in 1838 over 1830 from the above	.	.	.	.		
causes,	.	.	.	.		\$19,868



## 18 EXPENSES OF CRIMINAL JUSTICE

Of the fees for the prosecuting officers it is to be marked that the bill of costs in every criminal case contained a charge for the legal fees of the Attorney General, it is managed, amounting to about three dollars a case,\* and that by the mode of keeping these accounts the aggregate of these fees are *credited* to the Commonwealth. It should be understood *that not a dollar of the county treasurers' accounts is in fact paid to the Attorney General, or any District Attorney, and that these officers have no interest directly or indirectly in the amount of the balances.* Whenever a bill of costs is paid by any party, the Commonwealth receives the fees so paid towards its remuneration for the salaries of its prosecuting officers, but whether paid or not, the fees charged for its prosecution always appeared to its credit in these accounts. In the earlier period of judicial proceedings the prosecuting officers were compensated by fees only, and it was not until the year 1830, ch. 8,† that salaries in lieu of fees were provided for all these officers. The establishment of salaries was in commutation for the fees, the Commonwealth taking the fees to itself and paying the prosecuting officers a stipend. Of course, therefore, in proportion to the amount of business was the increase of these fees, and the Commonwealth thus got back a considerable part of the money which it paid to its prosecuting officers.‡

\* See printed Documents of the Senate for 1834, No. 56.

† Even this Act made certain additions to the salary, by fees in criminal cases, and the system of an entire compensation without fees continued in operation until 1832.

‡ The civil business is managed in the same way. Thus in the Attorney General's Report in 1838, p. 11, it appears he paid into the Treasury an amount of his fees \$129 52, in one action, and p. 21, \$28 03 in another. In his report of this year, \$5,260 76 was paid, being the whole of the fees in the judgment in the case.

The case of the County Attorney in Suffolk is somewhat different. He, too, has no interest in the fees. In 1834, ch. 202, it was enacted "that there be paid *of the Treasury of the County of Suffolk*, to the Attorney of the Commonwealth within and for said county annually, the sum of six hundred dollars in addition to salary now established by law."

By a report of a committee of the Legislature on this subject it was stated "that the amount of the fees of the County Attorney as taxed in bills of cost in the year ending in December, 1833, was \$1,834 29."\*

Notwithstanding the increase of business, the fees have since been much less, and are not found to cover the additional salary then established, and the difference was a part of the county treasurer's account.† For the present year the allowance of this difference has been suspended on a doubt whether it was to be borne by the county or be reimbursed by the Commonwealth, no provision for the latter purpose being found in the law. The matter is now in the hands of a committee of the Legislature.

Of the other sources of credits for the year 1838, in the accounts of the county treasurers, little need be said, because from their very nature they must be uncertain, fluctuating, and contingent. They are derived from fines, forfeitures, and penalties, upon which, from year to year, dependence can be placed. While I am preparing this report a morning paper announces the judgment of a

Printed Document of Senate for 1834, No. 56.

Since the Revised Statutes it is doubtful if any fees can be charged for prosecuting officers. The practice is different in different courts, and in the same court at different times.

## 20 EXPENSES OF CRIMINAL JUSTICE

police court, imposing a fine and costs, amounting to seven dollars, or if not paid in two days, imprisonment in the House of Correction two months. It is thus dependent on the personal ability of the party to pay. In this case, the state shall receive or shall pay a certain same sum.

Something in diminution of the general expenses must always be derived from this source. The amount must be more or less, as the kind of crime prevails which is punished by imprisonment or by pecuniary penalties. It is a curious fact, that the prevalence of crime is not that of disease, some seasons generating one, and other seasons a great abundance, and other seasons, for no assignable cause, producing as deleterious a harvest of another. The magnitude of these sums is the evidence of an extraordinary some state of the public mind. It shows a distrust of the authority of law, and a disposition to run the risk of securing its penalties. The very activity in the management which is evinced by the accumulation of these payments is however creditable to the official personages, but is demonstrative of the defects of the system. In our governments, the number of prosecutions for crimes is vastly less than the number of offences. A murder or highway robbery can rarely occur without a strong animadversion, but numerous misdemeanors are committed for every one that is brought before a court of law. The most perfect state of civil society is not that where the criminal department is most actively engaged, but where, constantly prepared for action, there is an actual occasion for its services; and the most economical arrangement for the public, is not that which subjects the functionaries to the top of their bent, but arrays a



e, which, like a strong military armament in time of war, looks down opposition, and acquires victory without test.

We expect to find crime where there is want, destitution, misery, and ignorance. From such sources it can produce no funds for the treasury, unless by its spoils and plunder. When, by the pecuniary taxes it has paid, we are compelled to believe it has reached a more elevated position of the community, we are sure it is profligacy and extravagance, from which it has proceeded, and that the restrictions of the law are not sufficient for its protection. It may be concluded also—for experience proves the general fact—that in many cases the crime is perpetrated by one person and the penalty paid by another. No money should be less acceptable for the public service than that which is gathered as an atonement for crime.

The expenses of jails and costs of courts being, as above stated, about twenty-seven thousand dollars more in 1838 than in 1830, and the fund produced by fines and forfeitures being for '38 increased over the same in 1830 by about seven thousand dollars, the balance against the Commonwealth for the ordinary administration of criminal justice, is found to be about twenty thousand dollars more in the one period than the other.

A like analysis for the intermediate years will show that this increase has gradually and constantly advanced, year by year, and will justify the anxiety which is felt, to provide some means for preventing its further progress. The question is thus fairly open to consideration, what is the cause of this excess? The answer which most obviously presents itself is, that there must be an increase of crime, and, of course, of prosecution and pun-



## 22 EXPENSES OF CRIMINAL JUSTICE.

ishment. This is undoubtedly true, but not to the extent which of itself sufficiently explains this rapid increase of expense ; and even if it was, the inquiry would be an important one, whether something may not be done to prevent the trouble which is thus doubly felt by the community, by adding to the evils of crime the evils of prosecuting it. There are no accurate means of ascertaining the amount of business in the courts of criminal jurisdiction. The present system of administering the law, was based on returns made by prosecuting officers, in 1831, of the amount brought before the courts for the five years next preceding. But these returns were not received from the whole Commonwealth, and were not made upon any uniform principle. They present an approximation to the facts, but not an accurate view of them. The abstract of the Reports of the district attorneys, made by the attorney general, and appended to his annual reports since 1832, present a view of criminal business in the courts of common pleas, municipal, and supreme courts, but have no relation to the business before justices of the peace, or police courts. By these several documents it will be found, that the expense of prosecution and punishment increase in a greater ratio than crime.

If this be a just conclusion, there must be some defect in the organization of the judicial system, or before which crime is prosecuted ; or in the system of order which the criminal law is administered ; or in the manner in which sentence is executed on a convicted criminal. It will probably appear to some extent in them all.

A defect in the organization or system, or in the

ment, will tend to an increase of crime, and an increase of crime will multiply the defects of such organization or system, the two causes constantly operating on each other, and reciprocally producing the evils combined of.

Experience teaches us that in addition to that mass of crime, which is produced by the sudden outbreak of inopportune and ungovernable passion, much is perpetrated on a strict calculation of chances, and is the result of premeditated and skilful arrangement, by men who deliberately devote themselves to felony or fraud. Such persons make their calculation on the state of the criminal law, the activity of the police, the chances of escape, the delay of trial, the accidents that prevent conviction, the facility of converting their plunder into the means of buying the silence of complainants or witnesses, or purchasing indemnity by means of bail, the kind and degree of punishment to which they are exposed, the probability that only one or two out of a numerous association may, in the worst event, be sufferers for the rest, and that at last, when the law is in process of execution upon a convicted offender, his sentence may be softened or his crime pardoned through the intervention of friends and the sympathies of the community. Persons have been induced to come from Europe to the United States because "it was a good place to carry on burglary,"—and to visit Boston, because "there were many rich stores and a good watch;" and a notorious culprit refused to repeat his crime in Massachusetts because of the law imposing severer penalties on a second or third conviction than on the first, but went with his associates for this purpose to a neighboring state where no such impediment obstructed their designs.

## 24 EXPENSES OF CRIMINAL JUSTICE

These and many other such cases may not be of legal proof. They are gathered only from the facts and observations which are made in the administration of the criminal law, but they are not less worthy of consideration, and they lead to the conclusion that the state of the criminal law offers encouragement to such persons, crimes will be more numerous, probably be multiplied, and the expenses of justice necessarily increased.

A system of criminal law and an organization of judicial courts that might be adequate to one country or society, or to a certain extent of population, would be wholly insufficient for another. The arrangement of the criminal business that had continued from an early period with occasional modifications, until 1832, would have before that time have been found wholly incompetent for the relief afforded in the more compact body of the Commonwealth, and its diminished population after the separation of Maine in 1820,—and it could not have continued from 1832 until the present time without entirely obstructing the action of the Supreme Court in its civil jurisdiction. There is an admonition, in the increase of business in the criminal department, and the growing expenses incident to it, that the time has come for further amendment, or at any rate that the tails of the system of 1832, where they were incomplete, should now be perfected. This system began by a formidable invasion of ancient usage, and was intended as an experiment, and therefore not intended beyond what the exigency required. It is believed that it has been successful and acceptable to the people, and that the modifications and improvements



perience has suggested, might now be adopted with advantage.

The great change made in the administration of criminal justice by the law of 1832, was to transfer nearly the whole jurisdiction from the supreme court to the court of common pleas; and the principal defect, to which much of the increased and increasing expense is to be attributed, is that no corresponding alterations were made in that court to meet the new services required of it. At first this omission did not develop itself with any considerable degree of inconvenience, because the forms and other arrangements of that court, enabled it to very readily to meet and discharge its new duties. As the business on the criminal side increased, it interfered with the civil causes for which that court was originally and chiefly instituted. The civil business also interfered with the criminal. The immediate effect of all this is seen in the accumulation of the public expenditure, and if it could be traced, would be found not less operative on the time and money of private suitors. The great proportion of the sum of the \$67,500 which is charged for the year 1838, as costs of court, so far as it occurs in the courts of record, is made up by the travel and attendance of witnesses, and for the fees of officers in serving them with process. Every thing, therefore, which increases this travel and attendance increases the expense. Postponements, delays, and continuances, are operative causes for this additional travel and attendance. Sometimes they occur of necessity, as a proper means of administering justice, and are not then to be complained of; but where they are imposed because the other arrangements or business of the court do not permit it to attend to the criminal business which is presented, at the earli-

est time in which it can be prepared, a tax is imposed on the public which exhibits itself in the balance of the County Treasurer's accounts. The union of civil and criminal business in the same tribunal at the same time creates this inconvenience. It prevents such call as might be favorable to despatch in either department and is equally troublesome to both. Although in some counties this inconvenience is much more severe than in others, yet it is every where, as I consider a serious cause of the increase of the criminal business and will be found as the civil or criminal business increases, constantly to produce the same effect. I have the honor, therefore, respectfully to submit, in obedience to the order of the Honorable Senate, requiring a report on this subject, that one cause of the accumulation of expenses is the want of an adaptation of the courts to the increased business, both civil and criminal which is laid upon it; and the first measure of prevention is to lay out in the future against the probable increase of these expenses such an arrangement as will secure the least possible delay between the arrest and the trial of the party. I do not mean to express an opinion in favor of a separation of the criminal from the civil jurisdiction of the courts, but only a separation of the times at which each is to be considered. The arrangement made in this part of the County of Worcester, is an example of what may be done in other parts of the state, with such variations, and substitutions of districts for counties, as on mature examination will be found generally acceptable.

The good effect already experienced from this arrangement in that county, is amply illustrated by the statement of the accounts for the public business there conducted. It could not fail to be much more sensibly felt in other

the Commonwealth where the criminal department is more extensive.

I cannot doubt also, that an extension of the system throughout the Commonwealth would tend to a greater degree of economy. I know, indeed, the attachment of the citizens of Boston to their own local court, and the reluctance with which they would consent to any change. The very able and efficient manner in which the public business is there conducted, may render it questionable how far any change is expedient, merely from motives of economy. But on the subject of expense there can be no doubt. Two courts are established in the county of Suffolk, between which the civil and criminal business is divided. It cannot be questioned that either one of them is competent to the administration of justice in both departments.

The municipal court was, for the year 1838, in session one hundred and forty-one days. Twelve of these days were merely to empanel the grand jury, and twelve others to receive their presentments. The common pleas is held in Suffolk for the same year, only eighty days. If, therefore, the civil business should be transferred from the common pleas to the municipal court, one more judge would be afforded to the general business of the Commonwealth, without the expense of an additional salary or a new officer, and the apparatus and incidents of one judicial court saved to the public; or if at a future time when one of these offices might be vacant, advantage should be taken to make the system of administering the law both in the civil and criminal departments, uniform throughout the Commonwealth, according to the plan above suggested, I have not the slightest doubt of its beneficial operation on the finances of the State.



Another cause of great expense incident to the system at present in operation, is the double trial given to a prisoner as a matter of right, by allowing to him, in certain cases, an appeal from the common pleas or inferior court to the supreme court.

Until the statute of 1832, parties convicted in the lower courts were in all cases entitled to an appeal, if they conformed to the terms upon which it was granted, and by force of such appeal, to have their case re-tried again in the supreme court, often after the lapse of a year, when the original witnesses for the prosecution could not be found, and when with a full knowledge of the state of the evidence against them, any defence could be made to meet it, which their ability and genuity could command. But the Statute granted the right only on a condition, which could rarely be complied with, namely, on bonds with sureties being given for the personal appearance of the party, in such sum as the court should consider to be reasonable bail. Once appeals were few. When by the statute of 1832, criminal jurisdiction was given to the court of common pleas over all crimes not capital, it was a question whether an appeal should be allowed, and if any, on what terms. A provision was then made, and by the Revised Statutes extended to the municipal court, by which the judgment of the lower court was final in all cases, except conviction for a libel, nuisance or conspiracy, or for an offence which is or may be punishable by confinement to hard labor for a term exceeding five years, and in such cases the appeal is granted without condition of the command of the defendant, who is to be bailed if he can find surety, and if not, is to be kept in jail at the expense, until his appeal is decided.



It is obvious, that, in all these cases of appeal, the proceedings in the lower court are a nullity for every purpose except the expense of the trial, and that no man who is properly advised of his rights, would forego the right of another trial, when by the ordinary accidents in human life, there are so many chances in his favor.

This provision for a second trial is a part of the system of 1832, extended by the Revised Statutes since 1836. It will be found more and more onerous to the public, not only in the direct effect it has on the expenses of justice by the costs of a second trial, and the longer confinement of the prisoner in jail, at the charge of the State, but by the inducement for the commission of high crimes which is held out by the prospect of eventual immunity, even after arrest and detection, through the delays of the law.

A second trial of the facts by a jury is wholly inconsistent with the principles of the common law, recognised by the Constitutions of the State and the Nation, as the foundation of all proceedings in our courts of justice. It could not by the common law be claimed as a right of the prisoner, nor imposed as the prerogative of government. If, in a first trial, an obvious error has occurred, another trial may be granted, on the presumption that the first is void, but the right of trial by jury implies that the verdict is to be conclusive unless error is proved to have occurred. The provision in our statutes is wholly inconsistent with any correct theory of the law.

If the supreme court ought, for the personal security of the citizen, in all cases to have jurisdiction over criminal trials, it seems useless in any case, to confer it on the common pleas. If the common pleas can in any case be trusted with this responsible duty, it might be fairly

inferred that in such matter their jurisdiction is conclusive.

It is required by the Bill of Rights, that the wealth should provide for the trial of persons with crime, "judges as free, impartial and independent as the lot of humanity will admit." If the supreme court for the purpose of trying issues of fact is not such a tribunal as the Constitution contemplates, the whole provision is founded in mistake; if the claim of absolute right for any further trial or appeal may be granted as an indulgence, in favour of sensible or presumed innocence, or as a high security against accident, error or mistake, but then it may be guarded by provisions to prevent any flagrant abuse. The right of revision by the supreme court over the decisions of law arising at the trial, may safely be allowed to remain, and should be secured to the prisoner on the most liberal terms; but the right of a second trial, if much longer allowed, will make the process of the lower courts an absolute mockery, and greatly increase those expenses which already, and before they have become generally known, it has very much increased.

I would therefore respectfully add, in furtherance to the question proposed to me, that the claim for a second trial by an accused person to a second trial by jury, if recognised, is one of the causes of the increase of criminal expense, and may be modified greatly to the advantage of public justice, without impairing the protection of individual rights.

If it should be deemed improper by the Legislature to debar an accused party from a trial in the high court, provision can be made for carrying the case to the first instance, without the expense of a trial.

the right of appeal does not, and cannot extend to the government, the public prosecutor must, by the production of his whole evidence, secure a conviction in the court below, and put the witnesses under recognisance, after the appeal, for their attendance at the next term of the supreme court. The next term may be a law term, in which no jury trials can be heard. They must be again recognised for their appearance at the term then next following. The costs of travel and attendance are thus accumulated. Opportunities for tampering with witnesses are multiplied, and when after a year's time from the former trial, they are wanted, they are often not to be found, or have forgotten the minuter facts of the case, or vary in some particulars from their testimony on the former trial, which is eagerly seized upon as a fatal discrepancy by the sharp-sighted counsel for the prisoner; being wearied with the trouble and waste of time which have been uselessly thrown away in the case, they abandon it in disgust. The elaborate mode of trying causes which has gradually increased for the last five or six years, adds very much to the expenses of criminal justice. For this I am not aware of any remedy by law. It can be controlled only by public sentiment, by which at present it seems to be rather sustained. But it diminishes the reason for a second trial as matter of right, although after a hard contest, the feelings of the advocate are generally so much interested that he sees certain success in the prospect of another effort more energetic than the first. No cases are ordinarily tried at more expense of time than appeals, when they are again brought to a jury. But for the causes already assigned, the reversal of the first verdict is less proof, than it would otherwise be, that the first was wrong.



## 32 EXPENSES OF CRIMINAL JUSTICE.

It was the object of the statute of 1832, to diminish the expenses of criminal justice, but by this provision for appeals, it has failed to a considerable extent its purpose. There were doubts existing at that time as to whether the final administration of the law by the common pleas would meet the public approbation. It is now believed no such doubts now exist, especially in cases where found in practice, that all questions of real difficulty may be referred with little expense to the higher tribunals dependent of this right of appeal.

If there are other reasons for permitting these appeals, they will probably be balanced against this consideration of expense. If the right of an accused party to go from court to court be as it has been said to be, among the "luxuries of liberty," it must, like other luxuries, be without question about its cost.

It is, however, respectfully submitted, that the provision for appeal may be modified without inconvenience by enabling the government, or defendant, or the defendant alone if that is deemed best, to take a case from the common pleas to the supreme court, by some other process than a jury trial, without the expense of travel and attendance of the witnesses below.

A failure on the part of the jury to agree upon a verdict by which a second and perhaps a third jury are required to pass on the case, adds to the expenses of administering the law. Instances of this kind will occasionally occur from the force of the different impression made on minds equally by the force of the testimony, but are much more likely to happen in those cases where they depend on questions about the principles of which there is any considerable diversity of opinion. Jurors are taken directly from the midst of the business and bustle of life, and in

Therefore not be deemed strange, that, in the agitation of the public mind, their own minds should not remain perfectly tranquil.

The law of libel—the law concerning blasphemy—and the laws in regard to the sale of liquors, have been questioned in regard to their constitutionality. Jurors have been addressed on that topic in trials at bar, and in direct opposition to the advice of the court some of them have doubted on the question, and of course no verdict has been returned in the case.

Upon this subject the direct action of the Legislature is the only means that can prevent for the future much expense.

It is the unquestioned right of an accused citizen to be protected from the operation of any laws not authorized by the Constitution, and from all penalties and forfeitures not recognised by its provisions, but the question is, by whom the constitutionality of a penal law may be settled? Is this high power the prerogative of the court or of the jury? In civil actions, and in actions for a penalty brought in a civil form, it is the unquestioned right of the court. It is only on the trial of indictments that it is claimed for the jury. If the Legislature are satisfied that it is properly claimed, and that their own high functions may be revised and annulled by the opinions of twelve men, or any one of the twelve, accidentally collected at the trial of a cause in an inferior court of law, nothing remains but to submit to the delay, uncertainty, and expense, which are the inevitable consequences. The institution of a jury is derived from a country where the will of Parliament is the sole expounder of the Constitution, and the only question of law which a jury there has to settle is, the proper inter-

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pretation of the Legislative will. That will is constitution and the law. Whether the power should or should not be extended further, under of government, is a question which is to have a influence on the economy of judicial proceedings and the finances of the State.

It will not be understood that by any thing in this report, I recommend any legislative interference with this matter, or that any opinion is offered on one side or the other. Called to state the causes of increased expense of criminal trials, I state this source of jurors on the constitutional provisions of position to be one—and no inconsiderable one—of the such expense.

Connected with this subject, and having an important bearing on the costs of judicial proceedings, are the changes which from time to time are made in the law.

The basis of all judicial action in this Commonwealth is that common law which existed in the country from our ancestors emigrated. Its positive enactments and modes of proceeding are, to a certain extent, regarded as operative here. It is not always easy to determine what that extent is, but changes which affect the law without a corresponding alteration in the other, are a constant source of doubt and embarrassment. Statutes, too, acquire by time and the construction put upon them in successive decisions, an exact and peculiar meaning for which there is no synonyme in the language. When other words are substituted, in a new statute on the same subject, a change of intention may or may not be presumable, and at all events, it is a vexed question whether it be so or not.

The 125th chapter of the Revised Statutes is



of the subject. It was intended to, and no doubt does consolidate and simplify all former provisions upon the same subject. But the phraseology, the collocation of words, and, on the whole, the meaning of the other statutes, possibly not in themselves so plain and perspicuous, had been settled by practice and judicial decision. This chapter will become equally intelligible in time, but in the mean while every alteration that has been made of a word, is a loop to hang a doubt upon. Cases are disputed before a jury, and reserved by the court for consideration on the effect of the new terms. Litigation is promoted and costs are the consequence. The cases of the Commonwealth vs. Richards, vs. Tuck, vs. Dunham, vs. Hope, vs. Kimball, and another vs. Kimball—some of which are, and the others will be reported in regular course, are among numerous examples of the uncertainty that is always produced in the first instance by a change in the text of the law. No man may be expected to submit to criminal punishment so long as there is a chance of escaping from it by a favorable construction of the law, especially if the costs of pursuing that chance falls on his prosecutor and not on himself. The imperfection of human language does not permit certainty of intention to consist with frequent change of phraseology, and all uncertainty of law or fact increases the expense of judicial proceedings.

On the subject of costs taxed by police courts and justices of the peace, I would respectfully remark, *first*, that the separate sums so charged do not appear in the county treasurers' accounts, as presented at the treasury of the Commonwealth, in a manner to exhibit with accuracy, what part they make of the whole sum charged; *second*, that these charges do in fact take two different directions, one part being presented for examination and allow-



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ance to the court of common pleas, and another paid to the county commissioners, and that this divided authority over them is unfavorable for a very exact understanding or settlement of the sums due.

It is believed also that the Revised Statutes do not provide a specific compensation for all the services and expenses incident to the duties of the examining magistrates; that the provision made for allowance in criminal cases is more fully under the control of the authorities than officers, by the provision of the R. S. ch. 14, § 31, was previously, and that the same uniform rule of taxation has not been adopted in each of the counties of the State.

A more precise rule than now exists can only be established by a revision of the fee table. Wherever there is a latitude of discretion in the allowing of public charges, there will be constantly found to be a gradual tendency to extravagance and expense.

There are many cases in which the legal compensation for the necessary services of an examining magistrate is wholly inadequate for the time employed. It is not admissible to obtain, by extra means in one case, for an insufficient remuneration in another.

In some counties—but not in all—the whole amount of costs taxed by an examining magistrate in a criminal case, is paid by the county treasurer to such magistrate, whose duty it is to divide the separate parts among the clerks, messengers and officers, according to the amount taxed to each individual; but no account is now required of the magistrate as to his payments in this respect. It is possibly prevent unjust imputations if such account were annually required.

The time which elapses between the accruing of the fees taxed by the magistrate and their payment a

county treasury, is on an average, about three months. If the suggestion which is hereinafter made in regard to the auditing of the accounts is acceptable, not only the magistrates' bills of cost, but the general bills of incidental and contingent expenses of the higher courts,\* or such of them as are not within any exact and positive provision of law, and whatever other expenses in the administration of justice, civil or criminal, devolve on the Commonwealth, might, without injurious delay, be examined and adjusted by one uniform rule. It might thereupon be also ascertained whether the Commonwealth or the county is to be chargeable with the expenses of jurors beyond their taxed fees; and under what circumstances and to what extent, and with what limitations an allowance for such expenses, when equitable, might be made.

In further examining the county treasurers' accounts, it will be found that the Legislature has by positive laws, in some instances increased, the amount of these balances—

1st. By transferring the fines which were formerly carried to the credit of the Commonwealth, to the credit of the county, and yet leaving the Commonwealth chargeable with the costs of prosecuting for such fines, when from any cause the costs are not paid by the accused party.

This is the case by the 47th chapter of the Revised Statutes concerning the regulation of licensed houses. By the 26th section, all fines imposed are appropriated to the county, whether the case be prosecuted before a justice of the peace or in a court of record. The act to regulate the sale of spirituous liquors, passed in April,

\* It is believed that the usage is various in the several counties on this subject, arising out of a different construction of the law.

1838, adopts the same provisions. Where the prosecution fails from any cause, or when the defendant is subjected to a fine without costs,—as he may be in the discretion of the tribunal before which he is tried and convicted—or where being sentenced to pay fine and costs he is liberated in due course of law without such payment, the whole costs of the prosecution are charged and must be paid by the State under the general provisions of law. By the returns made by order of the State, from the several clerks of the judicial courts, of prosecutions commenced since the first day of January 1837, for the recovery of penalties accruing under license laws, so far as said returns have yet been made, it appears that in all the courts of record in the Commonwealth except Dukes county, and in the police courts of the cities of Boston, Salem and town of Newburyport, all the fines imposed amounted to \$8,393, and costs to \$7,670 61.

By the operation of law, all that part of the first sum which was paid by defendants, went to the use of the county, and all that part of the latter sum not paid by the defendants is charged to the Commonwealth, and makes part of the county treasurers' balances.

2d. By chapter 122, section 10, of the Revised Statutes the fees of witnesses in the municipal court are raised from seventy-five cents per day, to one dollar; and the fees of witnesses before justices of the peace, and in construction police courts, are raised from thirty-three cents per day, to fifty cents.

There is no easy mode of ascertaining the effect of this increase of pay, with any considerable accuracy through the Commonwealth. From details in the report of the county treasurer of Suffolk, to which by his com-



ation of the view which I would present on this part  
sy I have had access, I am satisfied that the above pro-  
sion, with one other to be named, has increased the  
alance in this county at least twelve hundred dollars per  
num, and if this estimate is correct, to about three  
ousand dollars in the State. The other matter alluded  
, is the recent habit of charging for every witness at least  
e mile's travel. This, though small, is, for a single day,  
ur per cent. in one case, and twelve per cent. in  
other on the former amount, and makes in the aggre-  
ate a considerable addition. The discrimination made  
efore the passing of the Revised Statutes, between the  
allowance to witnesses in the compact population of a  
ty, and other parts of the Commonwealth, was abrogat-  
d by the Legislature, for causes of which they alone  
ere the competent judges. It is proper in the present  
ase only to point out the effects of this alteration which  
s seen in the augmentation above noticed.

But there is an indirect as well as a direct mode by  
hich this augmentation of fees increases the general  
xpenses, as it will be readily perceived that the fees of  
itnesses may be so high as to operate in the way of a  
ounty for the promotion of frivolous and vexatious pros-  
cutions. The effect of it will mostly be traced in the  
roceedings in justices' courts.

3d. The most important operation of the character  
ow under consideration, is that made by the various  
aws for the establishment and maintenance of HOUSES  
F CORRECTION, and for the employment of convicts  
within the same.

The directors of the State Prison report to the Legis-  
ature that it has cost the State nothing for the keeping  
f prisoners within that institution, since the year 1832.  
For a few years past every convict within a house of cor-

rection, not having a legal settlement within the Commonwealth, has cost the Commonwealth one dollar a week, for the whole time of his detention, and this only in the county of Worcester and the county of Lincoln, where, during the year 1838, nothing in the way of head has been charged to or been paid by the Commonwealth. Where such convict has a legal settlement, the cost is shifted from the Commonwealth, on to some town.

Whether a proper construction is put upon the law under which this charge is made and allowed, is the subject of further discussion.

Under the order of the honorable Senate, I desire to present only with facts; and it certainly is a very interesting fact, that a prisoner under sentence, should in one case cost nothing for his maintenance, food, clothing, discipline, and all the expenses of the officers and guards, while in another he should burthen the public with a charge of fifty-two dollars a year; especially as in both of these houses of correction the same kind of labor is performed by the prisoners as is performed in the State prison, and by the like, and often by the same men, and when also it is found that the amount of labor is, proportionally to the number of convicts, great, and the discipline by which it is produced, as severe in the one institution as the other. If there is a difference in the relative capacity of the two establishments, as probably is the fact, it is not large enough to account for all the difference of expense.

It is also singular that the location of punishment is different in expense to the public, is not found to have, in all cases, any very perceptible relation

time or character of the offender. Convicts are sometimes sent to the house of correction for three years, and to the state prison for one, and are often found to be the same persons alternating from one place to the other, and spending a great part of their lives in each establishment, by turns. When it is understood that there are other places in which persons may be confined, "whose health is feeble, and who lack the capacity to labor," and that the house of correction "*is designed for active discipline*,"\* it cannot but increase the wonder that these institutions should be so severely chargeable to the Commonwealth.

In the table of the balances paid in 1838, it appears that the charge of supporting prisoners in jail, and houses of correction, amounted to about \$17,000, or about \$7,000 more than in 1830. A part no doubt is made by the law which increased the charge of prisoners in jail, from five shillings to a dollar per week, but I have not attempted to make any discrimination between these charges, inasmuch as I have entertained an opinion, that the Legislature should deem the subject worthy of their further attention, they would pursue an inquiry very much into detail, with the view of ascertaining whether the provisions of 143d chapter of the Revised Statutes do in all cases authorize the construction that they have received by the immediate governments of these several houses of correction, and if they do whether other and more economical principles may not be enforced, going to the entire renovation and better arrangement of the whole system.

Report of the Inspectors of Prisons for the county of Suffolk, December, 1837, p. 8. See also the report of said inspectors for December, 1838, p. 3; and the 13th report of the Prison Discipline Society, pp. 261, 263.



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By the Revised Statutes, ch. 24, § 14S, it is provided that the master of each house of correction, "shall render a full and true account of the labor and earnings of each prisoner in his custody, and of the proceeds thereof, after deducting the costs of the materials furnished to each, and of the other expenses attending the execution of the sentences in the house of correction or jail under his charge."

So far as I am able to make the proper inquiry, it has been found that from some supposed difficulty in carrying out the above provisions are not very particularly attended to in regard to each individual convict, and the purpose for which it was intended to insure against a claim against the Commonwealth in the instances to which that section applies, is thus made ineffectual. It is certain that no adequate representation in this particular is brought out in the county treasurer's accounts, whereby neither the county treasurer nor the executive department, can have a correct knowledge of the true state of facts. As a consequence of this, the provision of the 26th section cannot be carried out in all instances fully accomplished.

The 27th section of the 143d chapter of the Revised Statutes expressly provides that no allowance shall be made out of the county treasury shall be made to any keeper of a jail or house of correction [of a jail or house of correction] for the support of a prisoner committed to such jail or house of correction, "except in virtue of the provisions contained in the 5th and 6th sections [of said chapter] when *such prisoner shall be found to have sufficient ability to support himself.*"

I would venture respectfully to submit my opinion that as the law now stands, convicts of the class described in the above named sections of the 143d chapter of the Revised Statutes, cannot be legally supported by the state, but there is reason to believe



charges for such convicts are made by several counties, and that in this respect there is a direct opposition of interest between a county and the Commonwealth. Whether the provision of law referred to should be permitted to remain, is not within my province to decide. It is understood that in several of the larger counties a desire has been expressed for a change. But so long as it is unrepealed it ought to be observed, and means ought to be at hand for ascertaining the fact at the treasury of the Commonwealth.

If no allowance can in certain cases be made *from* the county treasury, it seems very clear, that none could be charged *to* the Commonwealth.

A construction of the law has however prevailed, which imposes a great burthen on the State in this respect.

The rule adopted by the governors of these houses is understood to be, that if the whole labor of all the convicts for a year, with the dollar per week paid by the Commonwealth for each convict, does not defray the cost of maintaining the whole number for the year, that the balance may be rightfully charged to the Commonwealth. On this principle, the whole sum provided in the statute as a maximum allowance, is charged for the laborious and the idle, the sick and the well; and the prisoner who is not only of sufficient ability to maintain himself, but to do something towards the maintenance of others, if he has no legal settlement in the State, is made chargeable to the Commonwealth for the whole term of his imprisonment.

It is well known that some of the most costly of these houses, where there are most prisoners, are managed with exemplary ability, skill and judgment, by most respectable

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ble citizens, who, in various capacities, have the over-  
or control of them, and that a very large number  
convicts are kept industriously employed. It is com-  
by the overseers of the house of correction in Suffolk  
"the average cost per week for each convict for the  
four years, has been \$1 96, twenty-two cents of which  
"are charged as interest on the costs of building  
other property." In Middlesex it appears, from the  
testimony of the keeper of the house of correction,  
the expense, including his own compensation, estimated  
at \$1000, is averaged at \$1 60 on each prisoner per  
week, and that it increases or decreases in proportion to  
the number of prisoners, averaging less on a large than  
small number.

By the official statements in relation to many of the  
houses, it will appear, that much more than the actual  
cost of the support of a convict is derived from the  
earnings of some of them, and that the proceeds are ap-  
plied to the credit of the establishment.

The operation of the principle is precisely the same  
if the statute had provided a payment by the he-  
each individual confined; and whatever provision  
statute contains seemingly intended to limit the liability  
of the Commonwealth, if any such there be, have been  
entirely inoperative.

The expense of transporting prisoners from the  
jails in the Commonwealth to the state prison, is charged  
in the costs of that institution. The expense of re-  
moving convicts to the houses of correction is not included  
in their accounts but forms an additional item in the  
treasurers' balances. By the prison accounts for  
the charge of removing one hundred and three prisoners  
from all parts of the Commonwealth to Charlestown

\$7 90, or at an average of about \$7 30 for each. It is believed that taking the whole number of convicts sent to the houses of correction, the charge is somewhat larger and is made part of the costs of prosecution to be borne by the State, and that a change may be made with advantage in this particular.

It will further appear, that in many of these houses the same individual convicts are remanded from two to ten different times, but that there is no provision in this matter similar to the one providing additional terms on a second or third commitment to the state prison, excepting the limited authority given to magistrates by ch. 143, § 10, in the case of a remission of punishment on one conviction and a second commitment for a similar offence. But this is very far short of the law in relation to convicts in the state prison. All this is the great increase of the annual expense without any valuable effect in accomplishing the design, for which these houses, as appears by their name, are established. This subject may be pursued much further into detail but I do not deem it necessary to follow it in its minutest parts because there is in my judgment one grand defect in the whole system, without the correcting of which the county balances will continue annually to increase.

*There is no sufficient audit of these accounts by any responsible board or officer in the exclusive service of the Commonwealth.*

I am aware that they are submitted to the treasurer of the Commonwealth, and very certain that all that the law requires of that officer is most accurately and faithfully performed. I am aware also that they are afterwards submitted to the supreme executive. It would be wholly out of place in me to say anything of the attention paid to this subject by the honorable the Executive



Council. The exceeding watchfulness and care of the high department of the government, over the whole subject, so far as it comes within their constitutional powers, is known to honorable senators who have been members of that board. But the difficulty lies in the fact that the monies are all paid to the separate claimants, and not to the county treasury, before the accounts are presented to the treasurer of the Commonwealth, and it is the duty of the treasurer's accounts for money paid, and not the duty of the claimants on the county treasury for money due. The treasurer of the Commonwealth is to audit, and the Executive Council is required to revise and to pass the accounts.

In regard to the county treasurer's accounts the Revised Statutes, ch. 144, § 10, provides the evidence which when produced, shall be conclusive on this subject at the treasury of the Commonwealth. For all sums which in the foregoing table amount to \$6,000 the certificates of the clerks of courts is made a sufficient voucher." For the other sum of \$17,220 has been paid pursuant to certain orders, and evidence of such actual payment is offered, the duty of the treasurer of the Commonwealth is, to pass the accounts, and the executive department to give a warrant for payment. The system makes the counties the paymasters and efficient auditors, and allows them substantially to settle their own accounts. For all that part of the sum of \$67,500 charged in 1838, which was not on bills rendered by the attorney general or district and county attorneys, and for the whole amount of that other sum of \$17,220 constituting together a great part of the total sum of \$84,775, there is in fact no representation of the interest of the Commonwealth by whom it is to be refunded, in contradistinction to the interest of the counties to whom it is to be paid.

It may appear to superficial observation to be of little moment by what officers an account due from the public is audited, or whether it be audited by one part of the public or another. But the Commonwealth and the counties stand in the relative position of two large debtor and creditor corporations, with this difference between them, that the interest of the counties is local, personal, and operative, on a numerous, influential and active class of intelligent citizens; the Commonwealth stands as an abstraction, *isolated and alone!*

But although this duty of auditorship is not performed by the agents of the Commonwealth, it is, in fact, paid by the Commonwealth. By the law, a commission is paid by the State, to each county treasurer on his disbursements of two and a half per cent. on the jail expense, and five per cent. on costs of court. This allowance amounted in 1830, to \$2653 43, and in 1838, by calculation on the sums in the table, to about \$3,800. In Suffolk, there is a special board of accounts, whose expense in 1838, amounted to \$495, one half of which may be charged to this account. The county commissioners are called to this duty also, at considerable expense, so that the charges of supervision paid to the county officers amount now between five and six thousand dollars per annum, a sum quite large enough to establish and maintain a permanent auditor's office, with a competent number of clerks to revise these and all other accounts against the Commonwealth.

Before these county balances can be reduced to their proper limits or rather before their constant tendency to annual increase can be effectively arrested, a more exact distinction must be made by law in relation to those expenses which are now incurred in the general adminis-

tration of justice, and borne in unequal proportion by the counties and the Commonwealth. The line of distinction, if originally well defined, is growing every day, and a constant disposition is perceptible to throw off from the local to the State government the burthen of as much of these expenses as possible.

The laws which have from time to time been passed to diminish the costs of judicial proceedings, have had no other operation than to transfer the burthen from one county to another. The amount of the jury roll, for example, is yet to be paid by the counties respectively, but the tax formerly collected from suitors, by which a portion of this heavy burthen was diminished, is no longer demanded. The erection of court houses, jails, and houses of correction are a county charge, and as, in accordance with the taste and liberality of the people, they become more costly and elegant, the maintenance of them becomes more expensive. What are the relative proportions in which these expenses should be divided between the Commonwealth and the counties, if divided at all, need more explicit provisions than the laws now contain.

"It is a necessary result of the growth of the Commonwealth that there should be a gradual increase in the cost of maintaining the public establishments." In consequence of this it may be found, that provisions for the examination and payment of accounts may require to be changed, because establishments intended for a smaller and poorer community are not suited for one larger and more wealthy. Among the first and most efficient of these changes is the promotion of a judicious economy, is the fixing of the liability of the Commonwealth by precise laws, requiring all accounts, for which the Commonwealth is liable, to be presented to its own officers, audited and passed by



own agents, and paid in every instance at its own treasury, without the intervention of any other authority.

In a recapitulation of this subject, I beg leave to state, that the excess of expenditure in 1838 over 1830, and the intermediate years, arises from the following causes, viz :

1st. From the loss to the Commonwealth of the funds previously obtained by the excise on taverners and retailers.

2d. By the loss of the amount formerly paid by suitors or fees of the Judges of the court of common pleas.

3d. By the gradual, but constant increase of criminal business.

4th. By the inconvenient arrangement of the courts or the despatch of this additional business.

5th. By the extension of the right of appeal given to convicted parties, without the limitations and restraints upon it formerly imposed.

6th. By the growing habit of jurors to discuss the constitutional validity of Legislative acts, and their consequent disagreement and failure to return a verdict.

7th. By reason of the changes in the text of the Statute law, and consequent uncertainty of its precise meaning.

8th. By reason that in some cases fines are appropriated to the county in which prosecution is conducted, and costs of such prosecution charged to Commonwealth.

9th. Because the fees of witnesses and the salary of the County Attorney in Suffolk, have been increased by law.

10th. Because of the construction put upon the Statutes in regard to houses of correction, by means of which a great and increasing burthen is imposed on the Commonwealth for the support of convicts in those institutions.



11th. Because there is no sufficient audit of the accounts before the payment of the money by the treasurers, by any responsible board or officer, exclusive service of the Commonwealth.

12th. Because the legal liability of the counties to sustain the expenses of justice, is not sufficiently defined by law.

If it be found that some of these causes are permanent and irremediable, it cannot be doubted that they are completely within the control of the Legislature. That the progress of events which have now raised the balances to seventy thousand dollars, will in a few years increase them to an hundred thousand, unless the efficient power of the Legislature shall check them and prevent the rapidity of its movement.

The Senate has done me the honor to deliver its opinion by what means the tendency to further increase may be prevented.

I meet the responsibility thus imposed, not with apprehension, but with the plainness and sincerity which this confidence requires.

The measures, which in a hope they may be received with candor if not approbation, which I would fully submit, are

1st. To remodel the court of common pleas by transferring all its business in Suffolk to the municipality to be done at terms separate from present sessions, relieving the Judge of this court from the duties at present assigned to him, of being an inspector of the houses of correction, at three dollars per day.

The chief justice of the common pleas being relieved from all duty in Suffolk, could with his brethren of that bench, easily do all the criminal

business of the other parts of the Commonwealth, holding for the criminal department, terms in places where the law terms of the supreme court are now holden, (or in each county, if that were more acceptable,) at such times as may be arranged in detail on a consideration of the convenience of the public.

Under the administration of this learned and most highly respectable court, all issues of fact in criminal cases might be safely submitted to a jury without appeal, subject to such full and perfect supervision by the supreme court in matters of law as should amply preserve the rights of the citizen.

2d. To dissolve the inconvenient and unprofitable copartnership between the State and the Counties, and let each manage its own affairs in its own way;

1st. By limiting the liability of the Commonwealth for costs of court to certain enumerated items, and causing these to be examined and certified by the prosecuting officers of the government, and providing that in all cases where the Commonwealth is responsible for costs, it should have any fine imposed upon and paid by the party.

2d. By enacting that from and after a certain day to be named, all claims for remuneration by the Commonwealth to the Counties for the maintaining of persons in jails and houses of correction should cease; and that each county should keep and maintain its own institutions at its own expense.

This report is too far extended to permit me to anticipate the objections to these propositions, and to give such answers as in my own mind are perfectly conclusive.

If, however, the change of proceeding thus submitted is not yet acceptable, the next measure not to cure, but

in a good degree to palliate the evil, is to establish the means suggested in this report, a State Auditor's branch of the treasury department, where the disbursements which the State is to pay, shall be examined before payment, compared with the provisions of law and found to be correct.

I am aware that the subject I have been discussing to consider, has other relations than those of a financial character. The department of public justice, of which the whole matter belongs, is one of the great interests of the State; valuable above all others, because if its entire efficiency all the rest are useless.

Every advance of a people in freedom, wealth, refinement, luxury, education and intellectual or moral improvement seems by some inexplicable but inevitable consequence to create new subjects for the criminal law. I know this is so in the United States, and in no part more so than in this Commonwealth, where the astonishing increase of crime, whatever adds to the happiness of human life, is accompanied by a strange spirit of insubordination and the most varied varieties of crime.

There can be no economy in weakening the power of the judicial power. It should be always prepared for sudden outbreaks and unexpected emergencies, and at the cheapest, as it is safest in its strength.

Upon the matters herein suggested I am aware there are different opinions, as there are different interests. I have endeavored to present things truly as they are, to the best of my knowledge, and I submit this report to the Senate with profound respect.

JAMES T. AUSTIN,

*Attorney General*

*February 16, 1839.*



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.....No. 35.

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## REPORT AND RESOLVES

ON THE SUBJECT OF THE

FOREIGN SLAVE TRADE.

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**Commonwealth of Massachusetts**

Reported by a Special Joint Committee of  
Messrs. BLAKE and WHITMARSH, of the Senate

Messrs. EVELETH, of *Boston*,  
CHOATE, of *Essex*, and  
SOUTHGATE, of *Leicester*

of the House.

## **Commonwealth of Massachusetts.**

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**FEBRUARY 7, 1839.**

be Joint Special Committee to whom were referred the memorial of Henry Edwards and many others, citizens of Boston, and also the memorial of Mark Newman, and a large number of other persons, inhabitants of the town of Andover, praying this Legislature to request of Congress the adoption of measures for the more effectual suppression of the foreign slave trade ; and also for the protection of the growing commercial intercourse between the United States and the western coast of Africa, have duly attended to the subject submitted to them, and respectfully submit the following

## **R E P O R T :**

Whatever may be the differences of opinion among the great body of the high-minded and intelligent people of this Union, upon the subject of domestic slavery, and the degree of countenance and protection which should be given to it, under the existing Constitution of the United States, it is presumed there never has been, nor can be, but one feeling and one sentiment, as to the atrocious character of the foreign traffic in slaves, or as to its being the duty of our national government, so far at least as its

own citizens are concerned, to exercise all constitutional means for its immediate and effectual suppression. It is a circumstance well calculated to inspire the mind of every American citizen with a feeling of pride for the honor and glory of his country, that this solemn duty, assigned to a part of our National Legislature, has never, since the formation of this organization, been, for a single moment, intentionally neglected or regarded; but, on the contrary, has always been the leading and prominent subject of consideration in the councils of the nation. A recurrence to that series of successive Congressional enactments upon this subject, which commenced with the act of 1794, a very few years only, after the organization of the federal government, and which was followed up by no less than six other enactments, increasing always in the severity of their penalties, through the succession of years, down to the year 1820, when the solemn act of Congress, the foreign traffic in slaves was denounced as an act of piracy, will serve to demonstrate in a forcible manner, the utter abhorrence with which this nefarious business has been uniformly regarded by the legislators of the nation. And it is a gratifying circumstance, that, notwithstanding the extreme bitterness of party contention, which has at times pervaded the Congress, and not unfrequently had a sinister influence upon the legislation, in regard to various other subjects and objects, it seems not to have disturbed, in any degree, the consistency of views and policy of the nation, with regard to the slave trade. The several acts of Congress, which have been adverted to, not excepting the last, in 1820, denouncing this traffic as piracy, one of the highest crimes, in a moral, as well as political point of view, in the catalogue of human transgressions, which, it is understood, was passed by both branches of the Legislature, with



ious opposition from any quarter. The Committee, therefore, entertain the impression that, if, in the course of the investigation that has been instituted upon the present memorials, there have been elicited any facts or circumstances tending to show the inadequacy of the means hitherto, and now employed by the federal government, for the effectual suppression of this abominable traffic, it is their duty, as good citizens, to make a public statement of such facts and circumstances; and at the same time to recommend to the Legislature of Massachusetts the exercise of its influence with the councils of the nation, to the end that further and more efficient remedies and checks may be provided against the great evil in question.

It is a melancholy consideration that the cupidity and cunning of unprincipled men, of men destitute of all moral feeling, in cases where their own private interest is concerned, are not unfrequently found to be quite an overmatch for the wisest and the sternest legislation. Such, it appears, has been, in a most especial manner, the case, with regard to that series of enactments which have been alluded to, for the prohibition and punishment of the foreign slave trade. From a variety of well authenticated statements and documents that were laid before the Committee, in the course of their investigation, it was made sufficiently apparent, that, although, by the combined efforts that were made, a few years ago, by the United States and Great Britain, when a competent number of armed vessels, of either nation, were employed to visit occasionally, the western coast of Africa, for the purpose of breaking up the operations of the slavers, a temporary check was given to that horrible traffic, yet, that it has, more lately, been renewed, and is, in fact

now, carried on, alas, too, by American citizenry in disguise, to, even, a greater extent than formerly ; under circumstances of aggravated cruelty and barbarism. From these statements and documents, the Committee have reason to believe, that, for several years past, the average number of slaves from the coast of Africa annually have been transported and landed in Brazil, has not been less than about 8000 per month ; and in fact, that, in the course of eighteen months, only a few years since, an enormous multitude of 114,000 were known to have been landed in that country. It appears, also, that more than about 54,000 slaves from the coast of Africa are regularly sent, annually, to Rio de Janeiro, and about 40,000 per annum, to the island of Cuba, besides a few, to the boasted Republic of Texas. Many branches of this traffic might be specified, but unnecessary they should be, for the purposes of this report. It seems that this extensive and horrible traffic in human flesh, particularly, since it has been declared by the American and British nations, as amounting to piracy, has been, in a great measure, carried on, by means of sharp, clipper-built vessels of small tonnage, which are believed, are for the most part, of American construction and are, in very many instances, employed on account of the American citizens. These vessels, it appears, are constructed with a view principally, to their rapidity of sailing, whereby to escape the pursuit of cruisers, and without the least regard to the health, comfort or even the lives of the throng of wretched beings who are despatched to embark in them. In illustration of this latter circumstance, several well authenticated cases were stated before the Committee, in which it appeared, that many of these poor creatures had been stowed away, in

senseless merchandise, between the decks, commonly about three feet, only, in height, of these miserable little vessels, and there confined, to groan and swelter during a long voyage, or perchance, to be thrown overboard, in case of a pursuit, or of any other emergency which might seem to render such a disposition of them advisable for the safety of the guilty agents in the concern—many other details with regard to the manner in which this accursed traffic has been pursued, and that too, by American citizens, within the last few years, were stated to the Committee, but they were all of a character so revolting, disgusting, that it is not deemed proper to pollute the pages of this report by their recapitulation.

From this brief presentment of facts and circumstances, it is manifest, that the several acts of Congress that are herein before alluded to, for the prohibition of the foreign slave trade, have become, of late years, if not, actually, a mere dead letter, at any rate, almost entirely ineffectual for accomplishing the great national purposes for which they were intended. That such is found to be the present state of the case, is not at all surprising, when it be considered how little has been done or attempted on the part of the general government, for the purpose of carrying this series of laws into effectual execution. It, surely, cannot be pretended, that there are any considerable omissions or defects in the provisions of these enactments; they are full, explicit, and the great severity of their penalties, is sufficiently indicative of the abhorrence with which, from the beginning, our legislators have been accustomed to regard this traffic, and of their earnest desire to arrest its progress. But what are mere acts of legislation without the application of competent and proper means for their enforcement? In relation, espe-



cially, to such pursuits as the slave trade, which, in its nature, are calculated to tempt the avarice, and to excite the worst passions and appetites of base and sordid men. It is obvious that, although our national legislature continue as they have done, to pile line upon line, and precept upon precept, in the way of pains and penalties, it would all signify nothing.

The vile trade would still go on; the laws would be evaded by means of cunning and stratagem, be evaded; and for all the reasons that were before adverted to, the horrors of the traffic would, probably, be aggravated rather than diminished, by the additional, mere statutory restraints which were imposed upon it. The Committee are, however, unanimously of the opinion, that nothing but the exercise of great vigilance, and the employment of a considerable physical force, by the National Government, for the purpose of prevention, can ever be effectual for the suppression of the great and crying sin of the African Slave Trade. It has already been stated, that for several years past, little if any thing, in this way, has been done or attempted by our government. It is believed that several years have elapsed since a single armed ship of the United States, with instructions to cruise for and capture such vessels as are subject to seizure by the existing laws, has been known to have made even a transient visit to the coast of Africa, where, it is understood, that the trade, on American account, is largely carried on. This is not as it should be. Is it not due to the cause of humanity, to the honor and fame of this great republic, to the majesty of its laws, that it should not suffer in its violent intentions, so frequently expressed by the Executive, with regard to this interesting subject, to be frustrated and put to nought, when the means of their consummation

are ample, and might be so easily and promptly applied. From a series of facts that were developed in the course of the present investigation, and the opinions that were adduced, of several respectable, intelligent individuals, who had often visited the western coast of Africa, and were well acquainted with the whole course of the vile operations of the slavers in that region, the Committee were induced to believe, that the judicious employment by the United States, of comparatively even a small naval force, for the purpose, would be sufficient to arrest its progress, in a great degree, if not, wholly to annihilate this commerce.

It is believed, that a single sloop of war and an armed schooner, regularly stationed, during the more salubrious season of each successive year, at some selected points, upon this coast; and especially, if these should be accompanied by a few lighter craft, and a steamer or two, destined to cruise occasionally along the coast, between cape Messurado and cape Mount. The presence of even such a force would so disturb the intercourse between the slave dealers and the natives, as to bring about eventually and perhaps speedily, too, an entire abandonment of the trade, as being too difficult and hazardous to be pursued. If such be the case, which, the Committee have reason to believe, it really is, it would seem to be impossible, that the National Government, consistently with its original and constantly avowed policy regarding the foreign slave trade, consistently with its own dignity, and a just concern for the maintenance of a long series of laws of its own enactment, can now hesitate, as to the expediency of appropriating such slight means as have been adverted to, for the accomplishment of so great and glorious an object.

But there are other circumstances intimately connected



with this subject, which, in the view of the C are also worthy of special consideration. The the memorialists is not confined, exclusively, to of the foreign slave trade. They ask, also, th tent arm of the General Government may be towards Africa, for the protection and encoura a legitimate and valuable commerce, already su a degree, and which might be carried on to an definite extent, between the western ports on nent, and those of the United States. In re this object, a variety of well-vouched statisti were produced before the Committee, which show satisfactorily, that the commerce alluded now, whilst but in its infancy had, become a n deserving the serious attention of the Genera ment, and that, by the application of proper me tection and encouragement it might be carried to an almost unlimited extent. It appears that of the untiring zeal and efforts of the American tion Society, and its kindred auxiliary associati eral of the states, a considerable number of s or colonies have, within a few years past, b lished upon the western coast of Africa, some have already become the theatre of extensiv operations, and all of them being now in a h thriving and prosperous.

These settlements lie between the two ca mentioned, (distant from each other about 2 and contain, at this time, a free, civilized, po about 5000 souls, consisting principally of em orred people from the United States, and thei most of whom, it is said, have obtained the through the influence of the societies before m

It was stated, apparently upon competent authority, that all along upon this line of coast, are to be seen a succession of little flourishing villages, and that the principal one, Monrovia, which is called their capital, or seat of government, actually contains, at this time, not less than five hundred comfortable dwelling-houses; that, within the compass of these settlements, there are, at this time, established, eighteen Christian churches, about forty ministers of the gospel, eight hundred professors of religion; and that the institution of schools for the instruction of children and the improvement of adults, has always been with this people, an object of peculiar concern and attention.

It being, however, understood by the Committee, that the character of the different American Colonization Societies, their merits or demerits, the utility or inutility of their operations, upon the coast of Africa, constitute in fact, no part of the specific subjects submitted to them, according to the tenor of the memorials, they conceive it would be improper to pursue the inquiry any further, in detail, as to the purposes intended, or those that have been accomplished by means of those societies. By the terms of these memorials, it would seem to be their only object to stimulate the General Government to an exertion of its powers, for the more effectual suppression of the foreign slave trade; and for the protection of American commerce upon the western coast of Africa; and it is in reference, merely, to this latter branch of the subject, that the Committee now deem it essential to speak at all with regard to the present state of the settlements and improvements upon that coast. In this view, however, of the case submitted, it may be proper to add that, according to the representations made to the Committee, appa-



rently upon good authority, it appears, that the population which has been alluded to, are, in a high moral, temperate, industrious, and for the most part, actively engaged in various agricultural pursuits, on account of the extraordinary fertility of the soil, and are consequently highly productive and prosperous. It was shown, that the internal commerce between different points on the coast, was by no means inconsiderable, and that the application of suitable means of protection, might be easily facilitated and extended. As an example in illustration of the nature of this trade, it was stated, that a considerable number of merchant vessels of various sizes were built at the port of Monrovia, and placed under the control and command of black agents and navigators, who were constantly employed in traversing the coast, for the purpose of conveying from one port to another, various commodities of American and European production, in exchange for the gold dust, ivory, gums, drugs, palm-oil, and a great variety of other valuable productions from the interior of that fertile region. As to the nature and extent of the trade with that coast by vessels from the United States, of Great Britain, and other foreign countries, a series of statistical estimates, were also laid before the Committee, which, it would require too much space here to particularize. The Committee would, however, refer to one fact among others, as having a bearing upon the precise matter submitted to them, tending to show the extent of the American commerce with the Western coast of Africa, namely, that in the year 1831, eleven sail of vessels were despatched from the single port of Philadelphia, to Liberia, and for the export of African productions, such as have been mentioned, to, from the single port of Monrovia, during the year, was about \$200,000.

It was stated, however, that subsequently, this trade had, in a considerable degree declined ; that the appalling event, which, about this time, ensued, of the capture and destruction of the colonial schooner, *Mesurado*, and the murder of her crew, by slavers on the coast, and the circumstance moreover, that no sufficient effort was made, from any quarter, to bring these marauders, assassins, to punishment, had, very naturally, given an alarm, as well to our own merchants, as to the colonists, theretofore engaged in a legitimate trade on the coast, and been the means of discouraging them from the prosecution of their usual course of commerce.

It is believed, that the occasional employment, by the United States, of a small naval force, upon this coast, for the protection of this commerce, would have the effect to revive and extend it, so that it would speedily become a source of immense profit, and advantage, in many other respects, to the nation.

In fine, upon a careful consideration of the case submitted, and of all the facts and circumstances disclosed at the hearing, the Committee are of opinion that the subject is highly deserving the serious and immediate attention of the national government. They have therefore, agreed to recommend for adoption, the following resolves.

All which is respectfully submitted,

Per order of the Committee,

GEO. BLAKE, *Chairman.*



**Commonwealth of Massachusetts.**

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in the Year One Thousand Eight Hundred and Thirty-  
Nine.

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**R E S O L V E S****Concerning the Foreign Slave Trade.**

1. *Resolved*, That the continued pursuit of the foreign Slave Trade, by citizens of the United States, is a reproach to themselves and to their country; and that all practicable means ought immediately to be adopted by the general government, for putting an end to this foul and disgraceful traffic.
2. *Resolved*, That although the existing laws of the United States, upon this subject, are, in themselves, so far as mere legislation can go, abundantly sufficient, yet, that, for several years past, they have been, and are, now almost entirely inoperative, and void, by reason of there not having been exercised a competent physical power for their enforcement.



3. *Resolved,* That the cause of humanity, of the nation, and a due regard for the majesty of its own enactment, imperiously demand the immediate employment of a competent naval force as the only means of giving to them their proper effect.

4. *Resolved,* That the commerce now subsisting between the ports of the United States, and the coast of Africa, especially as this commerce might, by the exercise of proper means, be extended and increased, is an object well deserving the attention and consideration of the general government: and that the system which may be employed for the more effectual suppression of the slave trade, would, at the same time, but little additional expense, be the means of affording such protection.

5. *Resolved,* That His Excellency the Governor be requested to transmit a copy of these Resolves to our Senators and Representatives in Congress.

SENATE.....

.....No. 36.

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**MESSAGE FROM THE GOVERNOR**

**COMMUNICATING**

**DOCUMENTS FROM MAINE,**

**RELATING TO THE**

**NORTH EASTERN BOUNDARY.**

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M E S S A G E .

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*To the Senate and  
House of Representatives :*

I transmit to the two Houses copies of several documents received from His Excellency the Governor of Maine, on the 18th and 19th inst. They relate to the trespasses committed on the public lands,—the property of Maine and Massachusetts,—by bands of plunderers associated in large bodies for the purpose of carrying on their operations, without interruption. The measures taken by Maine to enable her Land Agent to put a stop to these depredations and the purpose of resisting those measures by military force, announced by the Lieutenant Governor of the Province of New Brunswick, will appear from the papers communicated. The course adopted and menaced by the local authorities of New Brunswick has led the Legislature of the State of Maine to the adoption of vigorous measures, for the protection of the public property and the defence of the agents employed in removing the depredators.

Among the papers transmitted by Governor Fairfield, a copy of a resolve of the House of Representatives of Maine of the 18th inst., requesting the aid of Massachusetts, in the measures adopted by Maine relative to the trespasses on the public lands. The opinions and feel-

ings of Massachusetts, on the great questions with the North Eastern Boundary, have been set forth, in the public acts of her Legislature and Executive, that they do not need to be repeated. The Agent of the Commonwealth has at all times co-operated with the Land Agent of Maine, in measures for the protection of the public property, within the scope of the ordinary duties of those offices. I had the honor in my address to the Legislature at the beginning of the session, as on more than one previous occasion of the same kind, to call the attention of the Houses to the ruinous extent of the depredations committed on the public lands in that region. The right of sovereignty and government of the territory belong exclusively to Maine. Massachusetts has no jurisdiction over it, and possesses only an interest in a moiety of the lands. For this reason, no further steps on our part have been taken, as they are not within the competence of Massachusetts, to assert her rights in the territory, which forms the subject of the controversy so long protracted, between the Government of the United States and Great Britain. Should any serious things unhappily arise, in which the Government of the United States shall call upon Massachusetts for assistance in asserting the rights so long and so justly withheld, I am persuaded that the call will be met by a prompt response from the Legislature and the Executive.

EDWARD EVERETT

*Council Chamber, 20th February, 1839.*

EXECUTIVE DEPARTMENT,  
Augusta, Feb. 16, 1839. }

*His Excellency* EDWARD EVERETT,  
*Governor of Massachusetts.*

SIR: I have the honor herewith to enclose a Resolve of the Legislature of Maine, making an appropriation for continuing the road "from the military road to some point on the river St. John, near the mouth of Fish River," provided the State of Massachusetts make a like appropriation for the same object.

By a paper forwarded to you this day, you will perceive, that the public lands, belonging to this State and Massachusetts, are now the scene of very extensive depredation and plunder—a band of armed and desperate men, believed to be mostly from the British Provinces, having gone in with a determination to cut timber to any extent they please, and to resist all efforts to break them up. You will perceive that Maine is taking a decisive course in regard to them, and which must, I think, terminate in breaking them up for this winter—at least those gangs whose places of operation are accessible to our forces.

But these depredations will undoubtedly be repeated, winter after winter, with more or less success, unless additional facilities are afforded the agents of the States, in cutting out and making new roads. Under these circumstances, I trust that your Excellency will concur with me in an anxious desire that the Legislature of Massachusetts

should make the appropriation upon which our  
made counterpart.

Of the importance of this road, in more res  
one, I need not speak to your Excellency, to  
whole subject is familiar.

With assurances of high respect,

I have the honor to be,

Your most obt. servant

JOHN FAIRBANKS



## STATE OF MAINE.

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*Resolve in favor of the Aroostook Road.*

*Resolved*, That the Land Agent of this State is hereby directed to carry into operation the law approved March 8, 1831, in relation to the opening and making a road from the military road to some point on the river St. John, near the mouth of Fish river, and not varying to the east of the mouth of the Madawaska river, provided the Commonwealth of Massachusetts shall authorize and empower her Land Agent to unite with the Land Agent of this State in continuing the same, and in contributing her equal proportion with this State in making the same; and the Land Agent of this State is hereby authorized to expend for this purpose the sum of twenty thousand dollars the ensuing year, from money paid into the land office.

*Resolved*; That the whole amount of the above appropriation shall be expended on that part of the road south of the point where it crosses the Aroostook river; provided so much shall be required to grub and turnpike said road, and bridge the streams that intersect it.

IN HOUSE OF REPRESENTATIVES, Feb. 4, 1839.

Read and passed.

H. HAMLIN, *Speaker*.

IN SENATE, Feb.

Read and passed.

JOB PRINCE,

Feb. 6, 1839. Approved.

JOHN FAIRFIELD

STATE OF MAINE.

*Secretary's Office,*  
Feb. 15,

I hereby certify, that the foregoing is a true and correct copy of the original, deposited in this office.

Attest, A. R. NICOLSON

EXECUTIVE DEPARTMENT,  
Augusta, Feb. 18, 1839. }

*Excellency* EDWARD EVERETT,  
*Governor of Massachusetts :*

SIR,—I have the honor herewith to enclose copies of the following papers, to wit : Message of the Governor to the Legislature of 24th ultimo,—Resolve of the Legislature of same date,—Message of the 15th instant,—Resolve of same date,—Message of the 18th instant,—Resolve of same date,—Proclamation of the Lt. Governor of New Brunswick, of the 13th instant, and Letter to the Executive of this State of the same

By these papers you will perceive that a military force has been ordered out by the Lt. Governor of New Brunswick, for the purpose of expelling the Land Agent's from the Aroostook territory, unless they shall consent voluntarily to withdraw. You will see that Maine has determined not to submit to such a degrading proposition, and has taken such measures for the maintenance of her rights as seemed to be called for by so extraordinary an emergency.

By an Order of the House of Representatives, heretofore communicated, I am directed to make this communication to your Excellency, and to request the aid of Massachusetts in the measures taken by this State, which I leave to the honor now to do.



Wishing to avail myself of an express a  
for Washington, I have only time to say tha

With the highest respect,

Your Excellency's Ob't. Serv

JOHN FAIRF

*Governor*

(COPY.)

*the Senate and House of Representatives :*

On the 14th of Dec. 1838, the Land Agents of Massachusetts and of this State, appointed Geo. W. Buckmore proceed to the Aroostook and Fish rivers, for the purpose of preventing, as far as he was able, any trespassing on the public lands. Mr. Buckmore has just returned from those places, and made a report, which has been communicated to the Governor and Council, and is now laid before you for your consideration.

By this report, it appears that a large number of men, many of them, I am informed, from the British Provinces, are trespassing very extensively upon the lands belonging to this State ; that they not only refuse to desist, but defy the power of this government to prevent their cutting timber to any extent they please.

Upon the Grand river, it is estimated, there are from twenty to fifty men at work. On the Green river, from twenty to thirty. On Fish river, from fifty to seventy men, with sixteen yoke of oxen and ten pair of horses, and more daily expected to go in. On township letter ten men, with six oxen, and one pair of horses. On Little Madawaska, seventy-five men, with twenty yoke of oxen and ten horses. At the Aroostook falls, fifteen men and 6 yoke of oxen. The quantity of timber which these trespassers will cut the present winter is estimated in value, by the Land Agent, at \$100,000.

These facts, it seems to me, present a case not merely the property, but the character of which is clearly involved. The supremacy of law, as the sanctity of right, cannot thus be contemned and outraged with impunity, without impairing the authority of the government, and inviting renewals of such depredations on the part of daring and lawless men.

Conduct so outrageous and high-handed as is exhibited by these reckless depredators upon the property, calls for the most prompt and vigorous action on the part of this government.

Under these circumstances, therefore, I would recommend that the Land Agent be instructed forthwith to proceed to the place of operation on the Aroostook upon Fish river, if practicable, with a sufficient number of men, suitably equipped, to seize the teams and break up the camps, and disperse those who are engaged in this work of devastation and pillage. The number suggested by the Land Agent, as sufficient for the purpose, is fifty. This estimate is probably too low.

The Land Agent, under the law of 1831, may be invested with sufficient authority for the purpose. But considering that it would be an extraordinary measure, and would involve considerable expense, there should be an appropriation, it was deemed expedient to ask the sanction of the Legislature.

It is not to be supposed, that the provincial government would wink at these lawless proceedings on the part of the Indians. On the contrary, we are bound to believe that they would be as willing as this government to have them arrested. Be it as it may, we are bound by every consideration of duty to ourselves, and to those who have confided their interests to our care, to take some

isive and efficient measures in a case of so flagrant a character. Nothing else will save our beautiful and valuable forests from destruction and plunder.

I have deemed it expedient to make this communication to you confidentially, under the impression, that if our proceedings should be communicated to the trespassers before the Land Agent was prepared to go in, they would combine their forces, and render any attempt to break them up more difficult, if not more dangerous.

JOHN FAIRFIELD.

*Council Chamber, January 23, 1839.*



STATE OF MAINE.

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*Resolve relating to trespassers upon the Public Land.*

*Resolved,* That the Land Agent be and is hereby authorized and required to employ forthwith sufficient force to arrest, detain, and imprison, all persons found trespassing on the territory of this State, as bounded and established by the treaty of 1783, and that the Land Agent be, and is hereby empowered to dispose of all the lumber, and other materials in the hands and possession of said trespassers, in such way and manner as he may deem necessary and expedient at the time, by detaching the same, or otherwise. And that the sum of ten thousand dollars be and hereby is appropriated for the purpose of carrying this Resolve into effect, and that the Governor, with the advice of the Council, be and is hereby authorized to draw his warrant, from time to time, for such sums as may be required for the purpose aforesaid.

January 24, 1839. Approved,

JOHN FAIRBANKS

*To the House of Representatives:*

In compliance with the request of the House of Representatives, I herewith communicate such information, as I have, in relation to the "reported abduction of the Land Agent."

Under the Resolve of the 24th of January last, entitled "Resolve relating to trespassers upon the public lands," the Land Agent repaired, with about two hundred chosen men, to the scene of operation on the Aroostook river. Prior to his reaching there, it is understood that the trespassers, amounting to about three hundred in number, all well armed, had combined and were determined to resist every effort to break them up. Finding however, that the Land Agent had prepared himself with a six pounder, they chose to retire from the ground, passing down the river.

The Land Agent with his Company also passed down the Aroostook to near its mouth, finding the several places of operation abandoned by the trespassers. On Monday last, they captured a gang of about twenty, who had been operating further up the river, and sent several who were considered the ringleaders to Bangor, where it is supposed they are now in jail. On Monday, the Land Agent sent a letter to Mr. McLaughlin, the Land Agent of the Province of New Brunswick, inviting a meeting with him at the house of a Mr. Fitzherbert, about four miles from where the company were then stationed, and on the same evening with four others, Mr. McIntire repaired to the house of Mr. Fitzherbert, intending to pass

the night there. The trespassers, however, in became possessed of the facts, and detached of about fifty, who seized the Agent and accompanying him, and transported them, it is believed, beyond the bounds of the State.

Our Company is now at No. 10, on the fortified and anticipating an attack, in case a should be made on our part, to execute the resolution of the 24th of January, by destroying the timber already been cut.

I have advised the sending of a reinforcement of hundred men, as it is probable the number of trespassers will be constantly augmenting, and in order to that effect be passed, shall appoint an Agent to temporarily the place of Mr. McIntire, and to lead the expedition. I have also despatched a special Agent to Sir John Harvey, Lt. Governor of New Brunswick, for the purpose, among other things, of ascertaining whether these high-handed proceedings of the trespassers are authorized, or in any way countenanced by the Provincial Government; and to procure the release of the Agent, and those taken with him. The Agent is now charged with other matters pertaining to this extraordinary and outrageous proceeding.

The facts above related, except in relation to the doings, have been communicated to me verbally by the Sheriff of Penobscot, who formed one of the parties to the Land Agent.

This is the only communication from the Land Agent or his company, which I have had verbally or in writing that could be relied upon.

JOHN FAIRBANKS

*Council Chamber, Feb. 15, 1839.*



## STATE OF MAINE.

*Resolve in relation to the North Eastern Boundary.*

*Resolved*, That the Governor be authorized to appoint, in circumstances in his opinion require it, some person or persons to supply temporarily, the place of the Land Agent, in executing the Resolve of the twentieth January last, relating to trespassers on the public lands. And the person or persons thus appointed, shall, at the time being, have all the power, and be subject to the duties of the Land Agent, so far as it regards the resolve aforesaid.

THE HOUSE OF REPRESENTATIVES, Feb. 16, 1839.

Read and passed.

H. HAMLIN, *Speaker*.

IN SENATE, Feb. 16, 1839.

Read and passed.

JOB PRINCE, *President*.

February 16, 1839.

JOHN FAIRFIELD.

## STATE OF MAINE.

Secretary's Office,  
Augusta, Feb. 18

I hereby certify, that the foregoing is a  
the original in this office.

Attest,

A. R. NIC

Secret

*the Senate and  
House of Representatives :*

Since my last communication to you upon the subject the trespassers upon the public lands, there has been forwarded to me a proclamation purporting to have been issued by the Lt. Governor of the Province of New Brunswick, which I deem it my duty to communicate to you with a statement of my proceedings consequent thereon.

By this proclamation, it seems that while the Lt. Governor disavows any authority from this government for the seizure of the Land Agent, he yet speaks of the attempt of the civil authorities of this State to drive a band of armed trespassers from our public lands as "an outrage" and an invasion of the territory of the Province of New Brunswick, and avows the fact of having ordered "a sufficient military force" to repair to the place where the Land Agent's party are endeavoring to execute your Resolve of the 24th of January, and to repel what he thus regards as an invasion of the Province of New Brunswick.

Immediately upon the receipt of this extraordinary document, I took measures to hasten the departure of the reinforcement of the Land Agent's party, understood to have been assembled at Bangor, awaiting orders, and numbering between four and five hundred men, and also

issued an order to Major General Isaac Hodges, 3d Division, to detach one thousand men, by route, otherwise, properly officered and equipped; who were to rendezvous at Bangor, and then proceed at the earliest possible moment to the place occupied by the Agent's party, on or near the Aroostook river, and render such aid as would enable the Land Agent to execute in effect the Resolve of the 24th of January.

I also despatched a special messenger with a communication to Major Kirby of U. S. Artillery, commanding at Hancock Barracks, Houlton, informing him of the facts, and asking his co-operation with the troops of his command, with the forces of this State, in repelling an invasion of our territory, and sustaining our troops in the lawful and authorized protection they are entitled to extend over a portion of the property of the State.

If these proceedings on my part, meet the approval of the Legislature, and an appropriation be made for that purpose, I shall feel it to be my duty to proceed forthwith to order a draft from the militia of at least one thousand men, who will hold themselves in instant readiness to march to the frontier should circumstances require it.

I have not yet called upon the President of the United States for aid in repelling the invasion of our territory by foreign troops, deeming it proper to postpone such application until the return of Col. Rogers from his special mission to Fredericton, or at least until some information be received from him, which will probably be about the 20th or 21st inst. If, however, you should deem it otherwise, and that no delay should be allowed for that purpose, an intimation to that effect will be immediately obeyed.



If I have not entirely misconceived the circumstances of the case presented for your consideration, it is one calculated to excite the deepest feeling in the breasts of our citizens, and calls for the most prompt and determined action on the part of this government. What is that case? You were informed, that a large number of armed and desperate men from a neighboring province had forced themselves into the territory of this State, with a fixed purpose of cutting a vast amount of timber, and of resisting, even unto blood, any attempts to arrest them in the prosecution of their unhallowed object.

Deeming it your duty to make an effort to protect the interests of those who had confided them to your care, you instructed the Land Agent to proceed to the scene of devastation and plunder with a sufficient force to arrest those who were engaged in it, and to break up their daring and wicked enterprise. While in the act of executing this order, the Land Agent was seized, transported beyond the bounds of the State, and finally carried *upon a sled*, like a felon, and under the guard of Provincial troops, to the capital of New Brunswick, for trial. Could a greater indignity be offered to any people having a particle of sensibility to its rights, and its honor, or to the sacredness of the personal liberty of its citizens? It is true that the Lieut. Governor denies that the original seizure was by authority,

But at Woodstock the *Magistrates* took cognizance of the affair, sanctioned the proceedings by issuing a Warrant (acting undoubtedly under the authority of the proclamation,) and sending our citizens under an ignominious escort to Frederickton. Really, if there be any apology or justification for this treatment of our citizens, it is not to be found in any code of international honor or comity with which I have been acquainted.

Not only this, but it seems that a military force sent into a part of the territory of this State, to expel a civil force sent there by this Government, for the protection of its property. How long are we thus to be trampled upon, our rights and claims derided, our people contemned, and the State degraded? If there ever was a time when the spirit of independence and self-reliance should assert itself, that time is the present. We should tamely submit to be driven from our territory, and engaged in the civil employment of looking after the protection of our property, without incurring a large outlay of money and ignominy and disgrace.

No palliating circumstance for this outrage can be found in even a pretence that the place where it was committed is within the concurrent jurisdiction of the two Governments, much less that the British Government has exclusive jurisdiction. Lands even higher up and further west than this were surveyed and granted by the State of Massachusetts more than thirty years ago, and Massachusetts and Maine have long been in the habit of granting permits to cut timber upon these Aroostook lands, without being to my knowledge molested from any quarter. I say nothing of the sales and actual occupation of the land itself.

It must be gratifying to all who have a true regard for the honor and interests of the State, to perceive that on this subject the din of party warfare is hushed, and a unanimity has prevailed alike honorable and commendable. No interruption to this commendable spirit, I trust, will be suffered. Union and good feeling, no less as well as prudence and energy, are absolutely necessary in times of extraordinary emergency.

JOHN FAIRBANKS

COUNCIL CHAMBER, *February 18, 1839.*

Since writing the foregoing, I have received a communication from the Lt. Governor of the Province of New Brunswick, in which he sets up an alleged agreement that the British Government shall have exclusive jurisdiction and possession of the disputed territory until the question be settled, and informs us that he is instructed not to suffer any interference with that possession and jurisdiction. He entreats us to withdraw the Land Agent's party, and adds, that he has directed a strong force of "Her Majesty's Troops to be in readiness to support Her Majesty's authority, and protect Her Majesty's subjects in the disputed territory in the event of this request not being immediately complied with."

In regard to all this I have only to say, that for one, I see no reason to doubt the entire correctness of the course we have thus far pursued, and that, with the blessing of God, I trust we shall persevere.

No such agreement as that alluded to by the Lt. Governor can be recognized by us, and it is an entire misapprehension, to say the least of it, that such agreement has ever been made.

The letter having been written before Mr. McIntire reached Frederickton, no official communication is made as to the course intended to be pursued in regard to him and those arrested with him. I learn, however, indirectly, that they are to be retained.

I am informed that the Land Agent's party have stationed themselves for the present at the termination of the Aroostook Road. While there, Mr. M'Laughlin, the Provincial Land Agent presented himself, and, in the name of Her Majesty, warned our party to disperse.



Mr. M'Laughlin and his two assistants were taken into custody, and the Agent with one assistant immediately sent to Bangor where they are now detained.

Copies of the Proclamation and Letter of the Governor of New Brunswick, are herewith communicated.

JOHN FAIRFIE

STATE OF MAINE.

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*Resolves for the Protection of the Public Lands.*

*Resolved*, That the honor and interest of this State demand, that a sufficient military force be forthwith stationed on the Restook river, west of the boundary line of the State, as established by the treaty of 1783; and on the river St. John, if found practicable, at such points as may be best adapted to the object, to prevent further depredations on the public lands, and to protect and preserve the timber, and other lumber already cut there by trespassers, and to prevent its removal without the limits of the State.

*Resolved*, That the sum of eight hundred thousand dollars be and hereby is appropriated for the purpose of enabling the Executive to carry out the purposes of the foregoing Resolve, and the Resolve passed January 24th, 1839, and that the Governor be and hereby is authorized with the advice of Council, to draw his warrant for the same, from time to time, as it may be needed for that purpose.

HOUSE OF REPRESENTATIVES, Feb. 18, 1839.

I hereby certify, that the foregoing Resolves, this day passed to be engrossed by an unanimous vote—one hundred and fifty members having voted thereon.

CHARLES WATERHOUSE, *Clerk.*

*By His Excellency Major General Sir John Harvey, K. C. B.  
and K. C. H. Lieutenant Governor and Commander in  
Chief of the Province of New Brunswick, &c. &c.*

JOHN HARVEY—

### A PROCLAMATION.

WHEREAS, I have received information, that a party of armed persons, to the number of two hundred, or more, have invaded a portion of this Province, under the jurisdiction of Her Majesty's Government, from the neighboring State of Maine, for the professed object of exercising authority, and driving off persons stated to be cutting timber therein; and, that divers other persons have without any legal authority, taken up arms with the intention of resisting such invasion and outrage, and have broken open certain stores in Woodstock, in which arms and ammunition belonging to Her Majesty, were deposited, and have taken the same away for that purpose,—I do hereby charge and command all persons concerned in such illegal acts, forthwith to return the arms and ammunition, so illegally taken, to their place of deposite, as the government of the Province will take care to adopt all necessary measures for resisting any hostile invasion or outrage that may be attempted upon any part of Her Majesty's territories or subjects.

And I do hereby charge and command all magistrates, sheriffs, and other officers, to be vigilant, aiding and assisting in the apprehension of all persons so offending,

to bring them to justice. And in order to aid and assist the civil power in that respect, if necessary, I have ordered a sufficient military force to proceed forthwith to the place where these outrages are represented to have been committed, as well to repel foreign invasion, as to prevent the illegal assumption of arms by Her Majesty's subjects in this Province.

And further, in order to be prepared, if necessary, to call in the aid of the constitutional militia force of the country, I do hereby charge and command the officers commanding the first and second battalions of the militia of the county of Carleton, forthwith to proceed as the law directs, to the drafting of a body of men, to consist of one fourth of the strength of each of those battalions, to be in readiness for actual service, should occasion require.

Given under my hand and seal at Frederickton, the thirteenth day of February, in the year of our Lord one thousand eight hundred and thirty-nine, and in the second year of Her Majesty's reign.

By His Excellency's command,

WM. F. ODELL.

*God save the Queen.*

(COPY.)

GOVERNMENT HOUSE, FREDERICKTON, }  
*N. Brunswick, Feb. 13, 1839.* }

SIR :—I have just heard with the utmost surprise and regret, that, without the courtesy of any previous intimation whatever to this government, an armed force from the State of Maine has entered the territory, the claim to which is in dispute betwixt Great Britain and the United States, and which it has been agreed betwixt the two general governments, shall remain in the exclusive possession and jurisdiction of England, until that claim be determined.

It has been my duty, on more than one occasion, to apprise the Executive Government of Maine, that my instructions do not permit me to suffer any interference with that possession and jurisdiction, until the question of right shall have been finally decided, in discussion betwixt the two general governments.

With the knowledge of these instructions, thus explicitly made known, I cannot but repeat the expression of the deep regret which I feel, that instead of seeking their recal or modification, through the presidential government, the State of Maine should thus have forced upon a subordinate officer, the alternative of either failing in his duty, by abstaining from the fulfilment of the commands of his Sovereign, or by acting up to them, placing the two countries in a state of border collision, if not the two nations in immediate and active hostility.

Such, nevertheless, is the position in which I find myself placed by this overt act on the part of the State of Maine, from which I do not hesitate in entreating your Excellency to relieve me, by ordering the immediate recall of a force whose presence within the precincts of the territory as claimed by England, it is contrary to my instructions to permit, and it is proper that I should acquaint your Excellency, that I have directed a strong force of Her Majesty's troops to be in readiness to support Her Majesty's authority, and to protect Her Majesty's subjects in the disputed territory, in the event of this request not being immediately complied with. With regard to my plea for these proceedings on the part of the state of Maine, connected with timber spoliations in that territory, I have to inform your Excellency, that I have given directions for a boom to be placed across the mouth of the brook, where the seizing officer, protected by a sufficient guard, will be able to prevent the passage of any timber into the St. John in the spring, or to seize it and dispose it to public sale, for the benefit of the "Disputed Territory Fund."

Similar precautions will be adopted in regard to any timber cut upon the upper St. John, or the tributary streams falling into it.

Anxiously awaiting your Excellency's reply to this communication,

I have the honor to be,

Your Excellency's

Most obedient humble serv't,

J. HARVEY.

STATE OF MAINE.  

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HOUSE OF REPRESENTATIVES, Feb. 18, 1839.

*Ordered*, That the Governor be requested to communicate forthwith, to the Executive of Massachusetts any information in his possession relating to trespasses committed upon the disputed territory. And to request her aid in the measures taken by this State.

Read and passed.

Sent up for concurrence.

CHARLES WATERHOUSE, *Clerk*.







SENATE.....

.....No. 37.

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**R E P O R T**

**ON THE SUBJECT OF**

**DOMESTIC SLAVERY.**

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## **Commonwealth of Massachusetts.**

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Reported by a Special Joint Committee consisting of  
Messrs. **FILLEY** and **PERKINS**, of the Senate, and  
Messrs. **RISING**, of *Worthington*,  
**RUSSELL**, of *West Cambridge*,  
**DAVIS**, of *Templeton*,  
of the House.



**Commonwealth of Massachusetts.**

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IN SENATE, Feb. 23, 1839.

The Joint Special Committee to whom were referred the petition of Jarius Lincoln and others, of the town of Hingham, and many other petitions of the same tenor, asking the Legislature to declare, that Congress has the constitutional power to abolish slavery and the slave-trade in the District of Columbia, and in the several Territories of the Union, and the slave-trade between the several states of the Union, and that Congress ought immediately to exercise that power; to whom were also committed the petition of Zephaniah Willis and others, of the town of Kingston, and sundry other petitions on the subject of the admission of New States into the Union, and to whom was committed an order of the honorable House of Representatives, of the 12th January last, in relation to Atherton's Resolutions, have considered the several matters so submitted, and ask leave to

**R E P O R T :**

That it is with much gratification they have found among themselves, an unanimity of opinion on a subject which has so long and so deeply excited the community at large, and at times threatened the repose of the several states whose true strength will be found to consist in their unity and harmony.



And they cannot forbear to congratulate themselves and the public, upon the continuance of that sound and patriotic feeling which has so long distinguished this happy Union—amidst all the conflicts which on the one hand may be supposed to trench upon constitutional rights, and on the other, essentially to suppress the impulses of humanity or narrow the sphere of individual and general justice. The Committee cannot for a moment shut their eyes to the direct and universal evils which accompany the institution of slavery, and they will not forbear earnestly to express a conviction which they deeply feel, that any hasty or inadequate remedy will have a tendency to aggravate, rather than assuage the influence of the disease. They would especially commend that cool, dispassionate, and thorough investigation which should always attend the examination of a malady deeply seated, and which must be healed by disclosing to the patient its fatal tendencies, and inducing his voluntary application of the appropriate and efficient remedies. And they would superadd their caution to that of the wise and prudent who have gone before them, lest the rash and precipitate operator should in applying the remedy inflict a wound deeper and more lasting than the disease itself.

That the institution of slavery existed in many of the states of the Union before the yoke of general bondage was broken, none will deny ; that it survived that great and glorious struggle for freedom, by which our independence was won, is also true ; that it will not now avail us to deplore, that like our own Massachusetts, the other members of the Confederacy did not forever rid themselves from an evil so alarming in its character and ruinous in its effects is clear.

That it was by a prudent and studied silence, impliedly countenanced in that sacred instrument, the Constitution of the United States, we are perhaps compelled to concede. The compromise and mutual concessions made in order to the adoption of that instrument, by the states, will not, in the opinion of your Committee, be disturbed by enforcing the views and objects of the petitioners. The institution of slavery is local, subject to distinction or modification by the local legislatures. For the District of Columbia, Congress is the legislature. It controls and regulates by necessity, the domestic relations of the several territories, over which it has jurisdiction. It cannot interfere, nor do the petitioners desire it to interfere with the local enactments of the several members of the confederacy. Yet it is the duty of Congress, as the general guardian of the Union, to confine the effects of local legislation within the territorial jurisdiction of the enacting power ; to see that no laws be enforced by one member, incompatible with the rights of the others.

The freedom of communication established by the Constitution and laws, through the medium of the post office, is an unquestionable right accorded to all the citizens of the Union, over which no local legislature should be permitted to exercise the slightest control. It is a matter within the exclusive jurisdiction of the national legislature. An interference by state authorities with any of the regulations adopted by Congress in regard to it, is unjustifiable ; not only so, but a direct violation of laws paramount to those of the states. Your Committee are therefore of opinion, that although Congress has no legislative control directly over the institution of slavery in the several states, it has the power of keeping open the pathway of moral light and knowledge, through which this institution can

be reached by argument and the influences of moral suasion, quite as efficient in the accomplishment of the humane objects of the petitioners; as legislative rules and sanctions can possibly be made.

No citizen of Massachusetts, it is apprehended, will maintain the power of his own particular confederacy to interfere with the other states, in a matter which belongs to their municipal or political regulation. The Committee would not be understood to include, in the above general remark, any expression of opinion against the exercise by Congress, of its plenary powers of legislation and jurisdiction over the several portions of our territory, which are now embraced within the District of Columbia and the several territorial governments already created by law. So far as the institution of slavery is confined to the legislation of the several states within whose limits it is tolerated by their Constitution or laws, the Committee do not understand that the wishes of the petitioners go beyond the recognition of the unquestionable and well-settled principles heretofore adverted to in this report. But as the objects of the petitioners are distinctly stated in their petition, it may not be amiss for the Committee to notice them severally in their report, accompanied by the opinions which they have adopted. The petitioners suppose the powers of Congress to be undeniably these :

1st. To abolish slavery and the slave-trade in the District of Columbia. 2d. To abolish slavery and the slave-trade in the several territories of the United States. 3d. To prohibit the slave-trade among the several states of the Union. 4th. To refuse the admission of any new state into the Union whose Constitution tolerates domestic slavery, and the petitioners conclude by expressing their full con-

viction that on these several subjects, Congress ought immediately to exercise its acknowledged power. The Committee have given to these interesting subjects, their anxious and undivided attention, and herewith communicate to the Legislature the conclusions to which they have arrived.

The first question involves the power of Congress over the subject matter of slavery in the District of Columbia, the Committee are of opinion that so far as the constitutional expression or grant to Congress of "full and exclusive power of legislation" over that portion of territory which now comprises the District of Columbia embraces the question of slavery, it has invested Congress with full power on that subject, and they cannot find any reason for the assumption that the subject of slavery, like any other, is not comprehended within the legitimate scope of the term "full and exclusive legislation in all cases whatsoever."

The Committee, therefore, fully concur with the petitioners in the opinion, that the Congress of the United States have the plenary power which they now call upon this Legislature to urge the General Government to exercise, and that immediate measures ought to be adopted by Congress to accomplish that object. By the acts of cession of the ten miles square, now comprising the District of Columbia, and entitled the Seat of Government, the jurisdiction of Virginia and Maryland ceased, and became vested in the Congress of the United States, and the persons and property of individuals residing within its limits became subject to the exclusive legislation of Congress in full and absolute right. As to the second proposition, the Committee cannot hesitate to express their opinion that Congress have the power to abolish slav-

ery and the slave-trade in the territories of the United States. And they are as clearly of opinion that Congress have the power to regulate or abolish the slave-trade between the several states of the Union, which is the third proposition of the petitioners; they also concur with the petitioners in their opinion of the right and duty of Congress to prohibit the admission of any new state into the Union, whose Constitution shall tolerate domestic slavery, and they concur in the general feeling of approbation expressed by the petitioners toward the Massachusetts delegation in Congress, for their sincere and able support of the sacred right of petition, the importance of which the subject of slavery has so fully developed.

The petitioners ask of the Legislature an expression of an opinion affirming that expressed by themselves upon four distinct propositions relative to the subject of slavery, and also for an application by the Legislature to the Congress of the United States to act upon the subjects which these propositions embrace. Were these subjects of fresh impression, recently propounded and undiscussed, their intrinsic importance, the legislative powers, and the important and intricate relations which they involve, would require of your Committee laborious and careful researches and inquiries. Such, however, is not the case; they have been most critically examined, their relations are intimately known, the powers of the National Government over them are unquestioned except by those whose interest has bewildered them in their researches after truth, or whose prejudices have blinded their intellectual vision, to repeat arguments to express conclusions to which the rules of logic strictly applied, have brought all honest, disinterested inquirers, and to enforce the practical adoption of those conclusions by any new efforts of the Legislature, can hardly be expected.

The Committee have also had under consideration, an order of the honorable House of Representatives of the 12th January, 1839, directing them to report upon the expediency of adopting a Resolution of the Legislature, expressing their disapprobation of the Resolutions offered by a member from New Hampshire, in the House of Representatives of the United States, at its present session, and they report that the said Resolutions are, in the opinion of your Committee, an infringement of the sacred right of petition, an infringement which ought not to be tolerated by a free people, and to which, none but willing slaves will submit, an interference with the right of discussion, a right inestimable to freemen, and dreaded only by those whose principles or motives cannot withstand the searching tests of truth.

The Committee, in conclusion, would remind the Legislature that as the several topics submitted to their investigation, have been heretofore repeatedly presented, and fully discussed and acted upon by the Legislature of this Commonwealth, and as our Senators have been instructed, and our present Representatives in the Congress of the United States have been advised in relation to the subjects contained in the several petitions referred to your Committee, they are of the opinion that no further or more specific action is necessary or expedient thereon, and respectfully ask to be discharged from the further consideration thereof. All which is submitted.

For the Committee,

LESTER FILLEY, *Chairman.*





**SENATE.....**

**.....No. 38.**

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**R E P O R T**

**OF THE**

**PETITION OF WILLIAMS COLLEGE.**

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## P E T I T I O N .

*To the Honorable the Senate, and the Honorable the House of Representatives, in General Court assembled :*

HUMBLY SHEW,

**The President and Trustees of Williams College—**

That they feel it their duty to present to your honorable body, the condition and wants of the institution entrusted to their care. The last grant of the Commonwealth to the college, which was made about twenty-five years ago, enabled the trustees, after reserving one-fourth part of it as a permanent fund for the assistance of indigent and worthy scholars, to establish a new professorship, and otherwise increase the usefulness of the institution. Through private liberality, they were able at a later period, to add another professorship, and more recently a third and fourth have been established—one of them instead of a tutorship which has been discontinued. During the same period, new buildings have been erected at an expense equal to more than half the cost of those before in possession, the library has been doubled, a very valuable mineralogical collection formed, and the philosophical and chemical apparatus increased threefold.

These additions and improvements have been made in

obedience to the calls of the public for more ample means and helps of education, and in accordance with what has been done meanwhile in other colleges. They were made, too, in the hope and expectation that the funds and other means of the institution would prove adequate to meet the charges consequent upon these arrangements. This expectation has not been fully realized, from the effect of causes not necessary to be now mentioned; and a few years since, the salaries of the officers, which were most of them before very moderate, were, with their consent, reduced to an amount felt by the trustees to be inadequate, and intended to be temporary. The whole expense annually for instruction is only four thousand five hundred dollars, a sum very small compared with those paid at other colleges, and too small to secure permanently the services of a competent body of instructors. The expenses of living have also been increased by a general rise of prices since this low scale of compensation was adopted, and this has made it the more necessary to restore at least what has been taken from the salaries of the professors. Yet the funds of the institution have been somewhat diminished ever since this retrenchment was made, and the annual income, taking these years together, has been below the expenses. Meanwhile it is becoming necessary to incur additional charges for repairs and the preservation of the college property. And your petitioners are brought to the painful alternative of endangering either the future success, or even permanency of the institution by serious encroachments on its funds; or its present reputation and usefulness by withholding appropriations necessary to the preservation of its property, and the adequate compensation of its officers. Under these circumstances, your petitioners seek at the hands of the Legislature of the Commonwealth, the con-

stitutional guardian and patron of education, such assistance as will enable them to meet the current expenses of the college without diminishing its present usefulness, or darkening its future prospects.

The trustees of the college would also further represent that provision more full than they have hitherto been able to make is still needed in some departments, particularly in modern languages, civil engineering, and practical mechanics; and your petitioners can at present look only to the Legislature for the means of putting these branches on the footing their importance demands.

And your petitioners will ever pray,

In behalf of the trustees,

M. HOPKINS,

*President of the College.*

Boston, Jan. 12th, 1839.

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SENATE, Jan. 16, 1839.

Referred to the Committee on the Petition of the Trustees of Amherst College, for a similar object :

Sent down for concurrence.

CHARLES CALHOUN, *Clerk.*

HOUSE OF REPRESENTATIVES, Jan. 16, 1839.

Concurred.

L. S. CUSHING, *Clerk.*

## **Commonwealth of Massachusetts.**

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The Joint Select Committee to whom was referred the Petition of the President and Trustees of Williams College, submit the following Report.

By order of the Committee,

S. G. GOODRICH.

## REPORT.

THE first class of Williams College was graduated in 1795, since which time, it has been, according to its means, one of the most active, energetic and successful seminaries in the Commonwealth. Its annual number of students has averaged about 120, and the whole number of its alumni has been about 1500. The amount of aid that it has received from the State is estimated at \$53,000; which would be about \$40 for each graduate.

The last grant of the Commonwealth to this College was in 1814, and consisted of  $\frac{3}{16}$ ths of the Massachusetts Bank tax for ten years, amounting to \$30,000. This enabled the trustees, after reserving one-fourth of it as a permanent fund for the assistance of indigent and worthy scholars, to establish a new professorship, and otherwise increase the usefulness of the institution. Through private liberality, they have been able, at a later period, to add another professorship, and more recently, a third and fourth have been established. During the same period, new buildings have been erected, at an expense equal to more than half of those before in possession; the library has been doubled, a mineralogical collection formed, and the philosophical and chemical apparatus increased three-fold.

These additions and improvements appear to have been made in obedience to a call for more ample means of in-



struction, arising from a more elevated standard of education in the country, and with a view to keep pace with the improvements introduced into other colleges. The expenses thus incurred were expected to have been met by the funds and other resources of the institution, but, owing to the concurrence of various causes, this expectation was disappointed, and the college was consequently found to be in a sinking state. The salaries of the professors were but \$800 each—a sum considerably below the salaries of professors of other colleges in New England. But with a view to relieve the institution, in a spirit of generous self-sacrifice, the professors in 1833, relinquished \$100 a year on their several salaries, in the expectation however, that they would be again raised to \$800. Though they have been disappointed in this, and though embarrassments have continued to hang over the institution, those who have had charge of it seem rather to have been stimulated to activity, than paralyzed by obstacles. In 1837, an astronomical observatory was erected, the first, it should be remembered, in the United States. Eighteen hundred dollars of the cost of this building was subscribed by one of the professors, and he receiving but a salary of \$700. The sum of \$4000 was raised by subscription, and an individual sent to Europe, who there purchased a very valuable and complete philosophical apparatus.

But though the efforts and sacrifices that have been made on the part of the managers of the college, have not merely prevented the institution from going backward, but have actually advanced its progress in usefulness, yet they now find themselves in exigent need of aid. The reduction of the salaries of the professors, left them but a

narrow and stinted income. A part of even this has been surrendered to the institution in the way of donation, to meet its frequent and earnest calls for assistance. To the privations imposed by means so restricted, the professors have submitted with cheerfulness, in the hope of sustaining the institution, and under the assurance of the trustees, that their salaries should be restored at the earliest possible date,—a time, however, which has not yet arrived.

It has been obvious to the president and trustees of the college for some time, that this state of things could not continue, and they have been anxiously looking around for some means of relief. Since the retrenchment in the salaries of the professors, there has been a gradual rise of prices, which has at once diminished the anticipated relief to the institution and enhanced the sacrifice to the professors themselves. Under the most rigid system of economy, there has been a gradual encroachment on the funds of the institution, and it appears from the treasurer's books, that these have been diminished nearly two thousand dollars. From the following estimate, it will appear that this diminution is still going on :

*Annual Receipts of the College.*

The average annual receipts from term bills, is	\$3,565
Interest of loans, exclusive of charity funds,	1,025
Receipts for degrees,	100
Rent of mansion house,	350
do. house of one of the professors,	60
	<hr/>
	\$5,100

*Amount of Expenses of the College.*

Salaries of instructors,	\$4,375
Treasurer,	200
Librarian,	20
Average expenses, for the last five years, of re-	
pairs,	480
For commencement,	173
Contingencies,	277
	<hr/>
	\$5,525
Deduct receipts above,	5,100
	<hr/>
Excess of the annual expenses over the receipts,	\$425

Nor does it appear, that this process of exhaustion, the accumulated reduction of the funds already noticed, and the inadequate support of the professors, constitute the whole ground upon which the aid of the Legislature is now solicited by the memorialists. The buildings of the college require an immediate outlay for their security and permanency, a sum entirely beyond any means within reach of the trustees ; and in order to bring up the institution at once to its proper capacity and scope of usefulness, and to meet the wants of the public, they need to make more ample provision for instruction in several departments, particularly in modern languages, civil engineering and practical mechanics. And where are the means for supplying these various wants, to be obtained ? The price of tuition is nine dollars a term. This is extremely low ; but if it were increased, it would probably reduce the number of scholars, and is not deemed expedient. Retrenchment in every department has been carried to its lowest limit, and private liberality has been applied to till

it is deaf to the appeals of the institution. In this state of things, the memorialists come to the Legislature, and ask for relief.

The question presented appears to the Committee to be simply this—shall one of those colleges, that in compliance with the injunctions of the Constitution has already received the bounty of the Commonwealth, and, that according to its means, has been among the most useful and successful of our seminaries, be sustained? The question is not whether it shall be enriched,—but shall it be protected from exhaustion and borne forward in its former career of usefulness. Shall the individuals who have made so many sacrifices to support the college, be relieved? Shall the interest of the public, in the success of this institution, be cherished? It would seem that there could be but one reply to these interrogations, particularly as the college in question is situated in a part of the State which enables it to afford peculiar facilities for giving the means of education to the middling classes; while at the same time, it is beyond the sphere of the sympathy of the rich. While, therefore, any injury to this college would fall on those who can least afford to suffer it, its means of relief, in case of extremity, are peculiarly restricted. Your Committee, therefore, could not hesitate as to their own duty, and the probable action of the Legislature, were the funds of the State in a situation to justify a grant of money. They do not indeed believe that rich endowments necessarily benefit a literary institution, and they can imagine cases in which these tend rather to retard than promote the usefulness of public seminaries. But the present case involves no question of this sort—it presents, indeed, only the single inquiry, whether a literary institution, proved useful by long

experiment, shall receive succour and support, at the hands of a Legislature, acting under the Constitution of Massachusetts.

Your Committee feel that the affirmative is the only reply that can be given to this question, and should therefore not hesitate to report a definitive resolve in compliance with the prayer of the petitioners, if the state of the treasury did not seem to forbid it. In view of all the circumstances, the Committee conceive, that a reference of the subject to the next Legislature, leaving it to them to act according to the facts then existing, will best subserve the interests of the public and secure justice to the claims of the petitioners.

HOUSE OF REPRESENTATIVES, Feb. 25, 1839.

Accepted : Sent up for concurrence.

L. S. CUSHING, *Clerk.*







**SENATE.....**

**.....No. 39.**

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**R E S O L V E S**

**CONCERNING THE**

**NORTH EASTERN BOUNDARY.**

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**Commonwealth of Massachusetts.**

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IN SENATE, February 26, 1839.

The Special Joint Committee to which was committed the message of the Governor of the 20th inst. and the accompanying documents, relating to the North Eastern Boundary, report the accompanying Resolves.

By order of the Committee,

L. CHILD, *Chairman.*

## **Commonwealth of Massachusetts.**

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In the Year One Thousand Eight Hundred and Thirty-Nine.

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### **R E S O L V E S**

Concerning the North Eastern Boundary.

*Resolved*, That the present state of affairs in relation to the North Eastern Boundary, as communicated to the Executive of this Commonwealth by the Governor of the State of Maine, furnishes a strong reason for again asserting our rights, and for reaffirming the positions heretofore assumed by the Legislature of this State against the unwarrantable claims of Great Britain, and in favor of strong and vigorous measures by the government of the United States, for a speedy adjustment of the existing difficulties in such a manner as shall protect Massachusetts and Maine in the possession of the large tract of territory guaranteed to them by the treaty of peace of 1783.

*Resolved*, That the active measures authorized by a Resolve of the Legislature of the State of Maine, passed

#### 4 NORTH EASTERN BOUNDARY. [Feb. 1839.

January 24, 1839, for the prevention of depredations upon the lands of Massachusetts and Maine, were required by the exigencies of the case, and a wise regard for the preservation of their interests in those lands, and were similar in character to measures adopted by the land agents of Massachusetts and Maine, in October last, and recognised and approved, through their agent, by the government of the Province of New Brunswick.

*Resolved*, That the claim by Great Britain to the exclusive jurisdiction of the whole of the disputed territory, as recently asserted by the Lt. Governor of New Brunswick, and his avowal of a determination to sustain that claim by a military force, and his denial of the right of the State of Maine to protect from the lawless depredations of trespassers, the lands which have long been in the actual possession of Massachusetts and Maine, call loudly for the immediate interference of the Federal Government; and that the crisis has now arrived, when the honor of the nation demands the adoption of decisive measures for the protection of her citizens, and for the preservation of the rights and interests of two of the members of our confederacy.

*Resolved*, That this Commonwealth will co-operate with the State of Maine in all constitutional measures for the preservation of the interests of both States in the lands in the disputed territory, and for the speedy adjustment of the existing controversy.

*Resolved*, That His Excellency the Governor be requested to transmit a copy of these resolutions to the Executive of the United States and of the State of Maine, and to each of our Senators and Representatives in Congress.

## SENATE.....No. 40.

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MR. CHILD moves to amend the Bill concerning the use of Rail-roads by inserting the following, to wit:

1     Sec. 3. No Rail-road Corporation shall, after  
2 its passenger, baggage or merchandize cars enter  
3 upon any other rail-road as aforesaid, take or receive  
4 upon or into said cars, any passengers, baggage or  
5 merchandize, except on the return of said cars, and  
6 then the said corporation may take and receive into  
7 or upon the same, passengers, baggage or merchan-  
8 dize, for the purpose of transportation over said other  
9 road or the remaining part thereof; and also over the  
10 road of said corporation or some certain portion  
11 thereof: so that all passengers, baggage and mer-  
12 chandize, destined to be transported over any rail-  
13 road, or some part thereof and no further, shall at  
14 all times be carried in the cars of the corporation  
15 owning said road, and no taking in, or letting out of  
16 passengers, baggage or merchandize, a short distance  
17 before arriving at, or after leaving any rail-road, for  
18 the purpose of depriving any such rail-road of the  
19 benefit of passengers, baggage or merchandize, prop-  
20 erly belonging to it, shall in any wise be permitted.



**SENATE.....**

**.....No. 41.**

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**A N A C T**

**CONCERNING THE**

**SINKING FUND**

**OF THE**

**WESTERN RAIL-ROAD CORPORATION.**

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**Commonwealth of Massachusetts.**

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IN SENATE, Feb. 27, 1839.

The Committee on the part of the Senate, to whom was recommitteed an Act concerning the Sinking Fund of the Western Rail-road Corporation, have considered the same and report it as taken into a new draft.

For the Committee,

GEO. MOREY.



## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Thirty-Nine.

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### AN ACT

Concerning the Sinking Fund of the Western Rail-road Corporation.

*BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :*

1    SEC. 1. The Treasurer of the Commonwealth,  
2 and the Treasurer of the Western Rail-road Corpora-  
3 tion, for the time being, shall be Commissioners of  
4 the Sinking Fund of the Western Rail-road Corpora-  
5 tion.

1    SEC. 2. The Governor, if he shall judge best, may,  
2 at any time hereafter, with the advice of Council, ap-  
3 point another Commissioner of said Fund, who shall  
4 hold his office for three years, and until another is ap-

## 6 SINKING FUND OF WESTERN R. R. [Feb.

5 pointed in his stead, And they may remove from  
6 office any such Commissioner, and fill all vacancies.

1 SEC. 3. The said Commissioners shall have the  
2 care and management of all the moneys, funds, and  
3 securities, at any time, belonging to said Sinking  
4 Fund ; but the moneys uninvested, and all the securi-  
5 ties of said Fund shall be in the custody of the Treas-  
6 urer of the Commonwealth.

1 SEC. 4. Said Commissioners shall, from time to  
2 time, at their discretion, invest the moneys on hand  
3 securely, and so that they shall be productive ; and  
4 the same may be loaned on interest to any county,  
5 city or town, or any bank in this Commonwealth, or  
6 they may be loaned on interest well secured by mort-  
7 gage of real estate, or by pledge of stocks of the  
8 United States, or of this State, or of the city of Bos-  
9 ton, or of the stocks of any rail-road corporation in  
10 this State, whose road is completed, and whose origi-  
11 nal capital has been wholly paid in, and whose road  
12 and property are unincumbered. And said Commis-  
13 sioners shall loan, at least one third of said fund, on  
14 security by mortgage of real estate, to an amount,  
15 in each case, not exceeding two thirds of the value of  
16 the estate. And they may invest a part of said Fund  
17 in the purchase of any of the stocks aforesaid : *pro-*  
18 *vided*, that not more than twenty per cent. thereof  
19 shall, at any one time, be so invested in said rail-road  
20 stocks, and not more than seven per cent. thereof in  
21 the stock of any one of said rail-road corporations.  
22 And they may sell and transfer any stocks or securi-  
23 ties belonging to said Fund.

1 SEC. 5. Said Commissioners shall keep a true  
2 record of all their proceedings ; and they shall annu-

3 ally, in the month of January, make a report to the  
4 Legislature, setting forth their proceedings for the  
5 year preceding, the amount and condition of said  
6 Fund, and the income of the several parts thereof for  
7 the year. And the said record, and the securities of  
8 said Fund, and the books of account belonging there-  
9 to, shall, at all times, be open to the inspection of the  
10 Governor and Council, or of any Committee of the  
11 Legislature.

1   SEC. 6. This act shall take effect from and after  
2 its passage.





**SENATE.....**

**.....No. 42.**

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**A N A C T**

**TO INCORPORATE THE**

**HARTFORD AND SPRINGFIELD**

**RAIL-ROAD CORPORATION.**

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**Commonwealth of Massachusetts.**

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SENATE, Feb. 28, 1839.

The Joint Standing Committee on Railways and Canals, to whom was referred the Petition of Charles Stearns and others, praying to be incorporated as the Hartford and Springfield Rail-road Corporation, report the accompanying Bill.

By order of the Committee.

LINUS CHILD, *Chairman.*

## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Thirty-Nine.

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### AN ACT

To incorporate the Hartford and Springfield Rail-road Corporation.

**BE** *it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :*

1    SEC. 1. Charles Stearns, George Dwight, Stephen  
2    O. Russell, and George Bliss, their associates and  
3    successors, are hereby made a corporation by the  
4    name of the Hartford and Springfield Rail-road Cor-  
5    poration, with all the powers and privileges, and sub-  
6    ject to all the duties, liabilities and provisions, contain-  
7    ed in that part of the thirty-ninth chapter of the Re-  
8    vised Statutes, which relates to rail-road corporations,

#### 4 HARTFORD AND SPRINGFIELD R. R. [Feb.

9 and in the statute of one thousand eight hundred and  
10 thirty-seven, chapter two hundred and twenty-six,  
11 and in the statute of one thousand eight hundred and  
12 thirty-eight, chapter ninety-nine, and in the forty-  
13 fourth chapter of said Revised Statutes ; and said  
14 corporation is hereby authorized and empowered to  
15 locate, construct, and finally complete a rail-road from  
16 a point in Springfield, to the north line of the state  
17 of Connecticut, commencing either at or near Chico-  
18 pee river, or at or near the village of Springfield, and  
19 passing southerly as near the Connecticut river as is  
20 convenient, and in the valley of the river, either upon  
21 the east side thereof, through a part of the town of  
22 Springfield, and near the mouth of the Pecowsick  
23 brook, and thence through the meadows in the town  
24 of Longmeadow, in the general direction towards  
25 Thompsonville to the line of the state of Connecti-  
26 cut ; or upon the westerly side of Connecticut river,  
27 and as near the same as is conveniently practicable,  
28 through a part of the town of West Springfield, to  
29 the line of the state of Connecticut, with a view to  
30 unite the said rail-road with a rail-road authorized by  
31 the legislature of Connecticut, from Hartford to the  
32 line of the State of Massachusetts.

1 SEC. 2. The capital stock of said corporation  
2 shall not exceed the sum of                      dollars,  
3 and shall be divided into shares of one hundred dol-  
4 lars each ; and the said corporation may purchase and  
5 hold such real estate, materials, engines, cars, and  
6 other things, as may be necessary for depots, for the  
7 use of said road, and for the transportation of persons,  
8 goods, and merchandise.

1    SEC. 3. The said corporation may unite the track of  
2 their road with the Western Rail-road, at such safe and  
3 convenient place near the Connecticut river, as shall  
4 not interfere with the depot building of the Western  
5 Rail-road Corporation, they paying all expenses inci-  
6 dent thereto. And the said Hartford and Spring-  
7 field Rail-road Corporation may cross the track of the  
8 Western Rail-road, in such safe and convenient place  
9 near said river, as will not interfere with said build-  
10 ings, or obstruct the convenient use of the track of  
11 said Western Rail-road.

1    SEC. 4. The Legislature may, after the expiration  
2 of        years from the time when the said rail-road  
3 shall be opened for use, from time to time, alter or re-  
4 duce the rate of tolls, or other profits upon said road ;  
5 but the said tolls shall not, without the consent of said  
6 corporation, be so reduced as to produce, with said  
7 profits, less than ten per cent. per annum.

1    SEC. 5. If the said corporation shall not have been  
2 organized, and the location of the route of said road  
3 filed with the county commissioners of the county of  
4 Hampden, within two years from the passage of this  
5 act, or if the said corporation shall fail to complete said  
6 road, within three years from the passage of this act,  
7 the same shall be void.

1    SEC. 6. The persons who shall become stockhold-  
2 ers in the Hartford and Springfield Rail-road Compa-  
3 ny, incorporated by the legislature of the state of  
4 Connecticut, in the year one thousand eight hundred  
5 and thirty, shall be stockholders of this corporation,  
6 together with such persons as shall become stock-  
7 holders of this corporation ; and when the stockhold-

## 6 HARTFORD AND SPRINGFIELD R. R. [Feb.

8 ers shall by vote have assented thereto, the said corpo-  
9 rations shall become united into one corporation, by  
10 the name of the Hartford and Springfield Rail-road  
11 Corporation, with a capital not exceeding the amount  
12 of the joint capital of both corporations ; and all the  
13 tolls, franchises, rights, powers, privileges and prop-  
14 erty, granted, or to be granted, acquired or to be ac-  
15 quired, under the authority of the state of Connecticut  
16 or of this State, shall be held and enjoyed by all the  
17 said stockholders, in proportion to their number of  
18 shares in either or both of said corporations.

1 SEC. 7. After the said union shall be perfected,  
2 the said stockholders shall hold their meetings, make  
3 their by-laws, appoint their officers, and transact all  
4 their business, as one corporation : *provided*, that one  
5 or more of the officers of said corporation shall be res-  
6 ident in this Commonwealth, and one or more of them  
7 in the state of Connecticut, on whom process against  
8 said corporation may be legally served in either state ;  
9 and said corporation shall be held to answer, within the  
10 jurisdiction where such service shall be made, and the  
11 process is returnable.

1 SEC. 8. The share or shares of any stockholder in  
2 said corporation shall be liable to attachment, and to  
3 be taken on execution, in the state where such stock-  
4 holder shall reside at the time of the service of such  
5 process : *provided*, the laws of such state authorize the  
6 attachment and taking on execution of such property,  
7 and an attested copy of such writ or execution, and of  
8 the return of the officer thereon, shall, at the time of  
9 such service, be left with the clerk or a director of

10 said corporation, or at his usual place of abode, by the  
11 officer making the service.

1 SEC. 9. The said corporation shall so make out  
2 and keep an account of the expenditures on said road,  
3 from its commencement to its completion, as clearly  
4 to exhibit what portion thereof belongs to that part of  
5 said road situated in Massachusetts, and what portion  
6 to that part in Connecticut. And two commission-  
7 ers shall be appointed, one by the governor of each  
8 state, to hold their offices for the term of four years  
9 and to be reasonably compensated for their services  
10 by said corporation, who shall ascertain, what propor-  
11 tion of expenditures on said road, and of the other ex-  
12 penses attending its construction, maintenance and  
13 use, also what proportion of the receipts and profits  
14 of said rail-road shall properly appertain and belong  
15 to the portions of said road in each state respectively.  
16 And the annual report required to be made by the di-  
17 rectors to the Legislature of this Commonwealth, shall  
18 be approved by the said commissioners.

1 SEC. 10. The said corporation, so far as their  
2 road is situated in Massachusetts, shall be subject to  
3 the general laws of this state, to the same extent as if  
4 their road were wholly therein.

1 SEC. 11. The fifth, sixth, seventh, eighth and  
2 ninth sections of this act shall not take effect, until the  
3 legislature of the state of Connecticut shall have  
4 enacted provisions similar to those contained in said  
5 sections; nor until the provisions so enacted in each  
6 state shall have been accepted by the stockholders of  
7 each of said corporations, at meetings duly called for the  
8 purpose; nor until the same shall have been ac-



**8 HARTFORD & SPRINGFIELD R. R. [Feb. '39.**

**9 cepted by the stockholders of said united corporation,  
10 at a meeting called for the purpose : at which meet-  
11 ing, they may ratify and confirm all or any of their  
12 former doings, and adopt them as the acts and doings  
13 of said united corporation.**





SENATE.....

.....No. 43.

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R E P O R T

OF THE

ASYLUM FOR THE BLIND.

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**Commonwealth of Massachusetts.**

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HOUSE OF REPRESENTATIVES, Feb. 12, 1839.

*Ordered*, That the Committee on Public Charitable Institutions be instructed to examine the expenditure of the bounties paid by the State to the New England Asylum for the Blind, and ascertain whether the cost of maintaining pupils by the State at that institution cannot be reduced.

Sent up for concurrence.

L. S. CUSHING, *Clerk*.

SENATE, Feb. 14, 1839.

Concurred.

CHARLES CALHOUN, *Clerk*.

## **Commonwealth of Massachusetts.**

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**IN HOUSE OF REPRESENTATIVES, Feb. 28, 1839.**

The Committee on Public Charitable Institutions to whom was referred an order of the House of the 12th inst. "to examine the expenditure of the bounties paid by the State to the New England Asylum, for the Blind, and ascertain whether the cost of maintaining pupils by the State at that institution cannot be reduced," have had the same under consideration, and ask leave respectfully to submit the following

## **R E P O R T.**

With a view of examining into the details of the expenditures of the Institution for the Blind, the Committee obtained an interview with Dr. Howe, its principal, who readily stated all the facts connected with the subject, as far as could be done by a verbal communication; but in order to be able more effectually to understand its actual condition, as well in reference to the necessity for such expenditures, as to the advancement of the pupils in the various branches of education which are taught in the Asylum, the Committee invited Dr. Howe to submit his

pupils to a public examination, to which he readily assented, and the same took place on the 26th inst., in the chamber of the House of Representatives. At this examination, the pupils were exercised in reading, arithmetic, geography, mathematics, natural philosophy, and also in music, and their recitations in these various branches reflected great credit both upon themselves and their instructors.

The whole number of pupils in the institution, is	65
Of which there are belonging to this State,	42

The number received on warrants from the	
Executive, is	33
Paid for by other states,	20
That pay their own expenses,	3
That pay a part of their expenses,	6
That pay nothing,	3

It will be observed, that, although by the original understanding, the institution was to receive but twenty beneficiaries on the part of the State, it has always manifested its readiness to admit the whole number which might apply, and in fact it has at the present time, thirty-six on behalf of the State, who pay nothing.

On a comparative view of the expenses for the education of the blind at this institution, with that of the deaf and dumb at the Asylum at Hartford, the Committee would beg leave to state, that, when the beneficiaries of Massachusetts were first sent to that Asylum, which was then comparatively in its infancy, the annual charge was two hundred dollars for each pupil; since then, that institution has received large donations, both from private munificence, and public benefactions. It is understood



that from the sale of one half of a township of land granted to it by the United States, upwards of one hundred thousand dollars have been realized. So that the present price of instruction has been much reduced. It should be borne in mind also, that the education of the blind is necessarily more expensive than that of the deaf and dumb. Music, so important to the former, is, of course, not required by the latter; and it is this branch of instruction which is the most expensive of all, especially when taught scientifically, as it is in our own institution, and so as to enable the pupils on leaving it to obtain a livelihood by the practice of that art. The product of the mechanical labor of deaf and dumb pupils, is much greater than that of the blind; in many of the common trades it is nearly equivalent to that of those who are free from their infirmity. In the Asylum for the Blind, however, the mechanical branches are in an improving condition. Weaving, the manufacture of mattresses, brushes, brooms, &c., are rendered as productive as the nature of such an institution will permit.

The success which has attended this most interesting charity and the high reputation the institution has deservedly acquired, both here and in Europe, reflects honor, not only on the State, but on our country; and your Committee have seen with pleasure, in a recent report on the education of the blind, made in Belgium to the government of that country; and also in an essay on the same subject, by one of the professors of the institution at Paris, honorable notices of the Institution for the Blind at Boston, and the decided superiority of this over those of Europe, is not only acknowledged, but it is stated, "that the improvements introduced into that institution, and especially in regard to typography, by its skilful di-

rector Dr. Howe, have, in fact, produced a revolution in the art of communicating instruction to the blind.

It is understood that arrangements have been made, or are nearly completed, for an exchange of the property, upon which the institution is located in Pearl street, for the estate known as the Mount Washington House, at South Boston. Should this be effected, it is believed that - some decided advantages will be obtained, but a considerable expenditure must of necessity be made, incidental to the arrangements of a new location.

Upon a careful consideration of the whole subject, your Committee have unanimously arrived at the conclusion, that no part of the appropriation of the State, as now applied to the Asylum for the Blind, can be withdrawn without materially affecting its advantages, and lessening the influence of a charity, which so essentially alleviates the sufferings of this unfortunate class of our fellow beings.

All which is respectfully submitted,

For the Committee,

ELIJAH VOSE, *per order.*

HOUSE OF REPRESENTATIVES, Feb. 28, 1839.

Read and accepted and ordered to be printed.

Sent up for concurrence.

L. S. CUSHING, *Clerk.*

SENATE, March 1, 1839.

Concurred.

CHARLES CALHOUN, *Clerk.*



## SENATE....No. 44.

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MR. GOODRICH moves to recommit the Report relating to Slavery, with instructions to report the following Resolves, to wit :

### **Commonwealth of Massachusetts.**

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In the Year One Thousand Eight Hundred and Thirty-Nine.

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## RESOLVES

On the Subject of Domestic Slavery.

1. *Resolved*, That Congress has the right to abolish slavery and the slave trade in the District of Columbia, and these being admitted to be moral and political evils, Congress ought immediately to exercise this right.

2. *Resolved*, That Congress has a right to abolish slavery and the slave trade in the Territories of the United States, and to abolish the slave trade between the

several States, and they ought to refuse admission into the Union of any new State, whose constitution tolerates slavery.

3. *Resolved*, That the Constitution of the United States lends no countenance to slavery, and that, while it cannot authorize interference with slavery in the States, history and the terms of the instrument itself prove that it was not the design of its authors to infuse into it any principles so much at variance with the great doctrine of equal rights upon which it is founded, as are involved in slavery, and that as it expressly provided for the abolition of the foreign slave trade, and as Congress has accordingly abolished it, that it is its duty to abolish slavery wherever it exists, through its power and subject to its control, and that this would be a fulfilment of the design of the framers of the Constitution, and in harmony with the spirit of that sacred instrument.

4. *Resolved*, That the resolutions of the House of Representatives at Washington, passed in December last, in relation to slavery, are at once a violation of the inherent and inalienable rights of petition and free discussion, and an alarming evidence of a settled design, (and one which has already advanced far toward consummation,) to make the Constitution of the United States the shield under which slavery is to be protected and perpetuated.

**SENATE.....**

**.....No. 45.**

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**PAPERS**

**RELATING TO THE**

**NORTH EASTERN BOUNDARY.**

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## Commonwealth of Massachusetts.

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IN THE HOUSE OF REPRESENTATIVES, March 4, 1839.

*Ordered*, That the Committee on Public Lands be instructed to cause to be printed forthwith, for the use of the Legislature, the President's late communications to Congress, on the subject of the Northeastern Boundary; the Reports of the Committees of Foreign Relations thereon, and the Memorandum of Agreement entered into by Mr. Forsyth, Secretary of State, and Mr. Fox, the British Minister, on the same subject. Also, the Report on the same, made in the Senate of the United States, July 4, 1838.

Sent up for concurrence.

L. S. CUSHING, *Clerk*.

SENATE, March 4, 1839.

Concurred.

CHARLES CALHOUN, *Clerk*.

**Commonwealth of Massachusetts.**

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IN SENATE, March 5, 1839.

The Committee on Public Lands, to whom was referred an order of March 4, directing "the President's late communications to Congress on the subject of the Northeastern Boundary; the Reports of the Committees of Foreign Relations thereon; the Memorandum of Agreement entered into by Mr. Forsyth, Secretary of State, and Mr. Fox, the British Minister, on the subject; also the Report on the same, made in the Senate of the United States, July, 1838," to be printed forthwith for the use of the Legislature, report the same.

Per order,

S. G. GOODRICH, *Chairman.*

## MESSAGE FROM THE PRESIDENT.

*To the Senate of the United States,  
and House of Representatives :*

I lay before Congress several despatches from his Excellency the Governor of Maine, with the enclosures, communicating certain proceedings of the Legislature of that State, and a copy of the reply of the Secretary of State, made by my direction, together with a note from H. S. Fox, Esq., Envoy Extraordinary and Minister Plenipotentiary of Great Britain, with the answer of the Secretary of State to the same.

It appears from the documents that a numerous band of lawless and desperate men, chiefly from the adjoining British Provinces, but without the authority or sanction of the Provincial Government, had trespassed upon that portion of the territory in dispute between the United States and Great Britain, which is watered by the river Aroostook, and claimed to belong to the State of Maine ; and that they had committed extensive depredations there by cutting and destroying a large quantity of timber. It will further appear that the Governor of Maine, having been officially apprised of the circumstance, had communicated it to the Legislature, with a recommendation of such provisions, in addition to those already existing by law, as would enable him to arrest the trespassers, and secure the timber which they were about carrying away ; that in compliance with a resolve of the Legislature, passed in pursuance of his recommendation, his Excellency had despatched the land agent of the State, with a force deemed adequate to that purpose, to the scene of the alleged depredations, who, after accomplishing a part of his duty, was seized by a band of the trespassers, at a house claimed to be within the jurisdiction of Maine, whither he had repaired for the purpose of meeting and consulting with the land agent of the Province of New Brunswick, and conveyed as a prisoner to Frederickton, in that Province, together with two other citizens of the State, who were assisting him in the discharge of his duty.

It will also appear that the Governor and Legislature of Maine, satisfied that the trespassers had acted in defiance of the laws of both countries, learning that they were in possession of arms, and anticipating (correctly as the result has proved) that persons of their reckless and desperate character would set at nought the authority of the magistrates, without the aid of a strong force, had authorized the sheriff, and the officer appointed, in the place of the land agent, to employ, at the expense of the State, an armed posse, who had proceeded to the scene of the depredations, with a view to the entire dispersion or arrest of the trespassers, and the protection of the public property.

In the correspondence between the Governor of Maine and Sir John Harvey, Lieutenant Governor of the Province of New Brunswick, which has grown out of these occurrences, and is likewise herewith communicated, the former is requested to recall the armed party advanced into the disputed territory for the arrest of trespassers, and is informed that a strong body of British troops is to be held in readiness to support and protect the authority and subjects of Great Britain in said territory. In answer to that request the Provincial Governor is informed of the determination of the State of Maine to support the land agent and his party in the performance of their duty, and the same determination, for the execution of which provision is made by a resolution of the State Legislature, is communicated by the Governor to the General Government.

The Lieutenant Governor of New Brunswick, in calling upon the Governor of Maine for the recall of the land agent and his party from the disputed territory, and the British Minister in making a similar demand upon the government of the United States, proceed from the assumption that an agreement exists between the two nations, conceding to Great Britain, until the final settlement of the boundary question, exclusive possession of, and jurisdiction over, the territory in dispute. The important bearing which such an agreement, if it existed, would have upon the condition and interests of the parties, and the influence it might have upon the adjustment of the dispute, are too obvious to allow the error upon which this assumption seems to rest, to pass for a moment without correction. The answer of the Secretary of State to Mr. Fox's note, will show the ground taken by the government of the United States on this point. It is believed that all the correspondence which has passed between the two governments upon this subject, has already been communicated to Congress, and is now on their files. An abstract of it, however, hastily prepared, accompanies this communica-

tion. It is possible that in thus abridging a voluminous correspondence, commencing in 1825, and continuing to a very recent period, a portion may have been accidentally overlooked; but it is believed that nothing has taken place which would materially change the aspect of the question as therein presented. Instead of sustaining the assumption of the British functionaries, that correspondence disproves the existence of any such agreement.

It shows that the two governments have differed not only in regard to the main question of title to the territory in dispute, but with reference also to the right of jurisdiction, and the fact of the actual exercise of it in different portions thereof. Always aiming at an amicable adjustment of the dispute, both parties have entertained and repeatedly urged upon each other a desire, that each should exercise its rights, whatever it considered them to be, in such a manner as to avoid collision, and allay, to the greatest possible extent, the excitement likely to grow out of the controversy. It was in pursuance of such an understanding, that Maine and Massachusetts, upon the remonstrance of Great Britain, desisted from making sales of lands, and the general government from the construction of a projected military road in a portion of the territory of which they claimed to have enjoyed the exclusive possession; and that Great Britain, on her part, in deference to a similar remonstrance from the United States, suspended the issue of licenses to cut timber in the territory in controversy, and also the survey and location of a rail-road through a section of country over which she also claimed to have exercised exclusive jurisdiction.

The State of Maine, had a right to arrest the depredations complained of; it belonged to her to judge of the exigency of the occasion calling for her interference; and it is presumed that, had the Lieutenant Governor of New Brunswick been correctly advised of the nature of the proceedings of the State of Maine, he would not have regarded the transaction as requiring, on his part, any resort to force. Each party claiming a right to the territory, and hence to the exclusive jurisdiction over it, it is manifest that, to prevent the destruction of the timber by trespassers, acting against the authority of both, and at the same time avoid forcible collision between the contiguous Governments during the pendency of negotiations concerning the title, resort must be had to the mutual exercise of jurisdiction in such extreme cases, or to an amicable and temporary arrangement as to the limits within which it should be exercised by each party. The understanding supposed to exist between the United States and Great Britain has been found

heretofore sufficient for that purpose, and I believe it will prove so hereafter, if the parties on the frontier, directly interested in the question, are respectively governed by a just spirit of reconciliation and forbearance.

If it shall be found, as there is now reason to apprehend, that there is, in the modes of construing that understanding by the two governments, a difference not to be reconciled, I shall not hesitate to propose to her Britannic Majesty's Government, a distinct arrangement for the temporary and mutual exercise of jurisdiction, by means of which similar difficulties may in future be prevented.

But between an effort on the part of Maine to preserve the property in dispute from destruction by intruders, and a military occupation by that State of the territory, with a view to hold it by force, while the settlement is a subject of negotiation between the two Governments, there is an essential difference, as well in respect to the position of the State, as to the duties of the general Government. In a letter addressed by the Secretary of State to the Governor of Maine, on the first of March last, giving a detailed statement of the steps which had been taken by the Federal Government to bring the controversy to a termination, and designed to apprise the Governor of that State of the views of the Federal Executive, in respect to the future, it was stated, that while the obligations of the Federal Government to do all in its power to effect the settlement of the boundary question were fully recognised, it had, in the event of being unable to do so specifically, by mutual consent, no other means to accomplish that object amicably, than by another arbitration, or by a commission with an umpire in the nature of an arbitration; and that in the event of all other measures failing, the President would feel it his duty to submit another proposition to the Government of Great Britain, to refer the decision of the question to a third power. These are still my views upon the subject, and until this step shall have been taken, I cannot think it proper to invoke the attention of Congress to other than amicable means for the settlement of the controversy, or to cause the military power of the Federal Government to be brought in aid of the State of Maine, in any attempt to effect that object by a resort to force.

On the other hand, if the authorities of New Brunswick should attempt to enforce the claim of exclusive jurisdiction set up by them, by means of a military occupation on their part of the disputed territory, I shall feel myself bound to consider the contingency provided by the Constitution as having occurred, on the happening of which a State



has the right to call for the aid of the Federal Government to repel invasion.

I have expressed to the British Minister near this Government a confident expectation that the agents of the State of Maine, who have been arrested under an obvious misapprehension of the object of their mission, will be promptly released; and to the Governor of Maine that a similar course will be pursued in regard to the agents of the Province of New Brunswick. I have also recommended that any militia that may have been brought together by the State of Maine, from an apprehension of a collision with the Government or people of the British Province, will be voluntarily and peaceably disbanded.

I cannot allow myself to doubt that the results anticipated from these representations will be seasonably realized. The parties more immediately interested cannot but perceive that an appeal to arms, under existing circumstances, will not only prove fatal to their present interests, but would postpone, if not defeat, the attainment of the main objects which they have in view. The very incidents which have recently occurred will necessarily awaken the Governments to the importance of promptly adjusting a dispute, by which it is now made manifest that the peace of the two nations is daily and imminently endangered. This expectation is further warranted by the general forbearance which has hitherto characterized the conduct of the Government and people on both sides of the line. In the uniform patriotism of Maine, her attachment to the Union, her respect for the wishes of the people of her sister states, of whose interest in her welfare she cannot be unconscious, and, in the solicitude felt by the country at large for the preservation of peace with our neighbors, we have a strong guarantee that she will not disregard the request that has been made of her.

As, however, the session of Congress is about to terminate, and the agency of the Executive may become necessary during the recess, it is important that the attention of the Legislature should be drawn to the consideration of such measures as may be calculated to obviate the necessity of a call for an extra session. With that view, I have thought it my duty to lay the whole matter before you, and to invite such action thereon as you may think the occasion requires.

M. VAN BUREN.

WASHINGTON, 26th February, 1839.

The Committee on Foreign Relations, to which was referred the Messages of the President of the United States of the 26th and the 27th inst. and the accompanying documents, in relation to the existing difficulties on the North-eastern frontier of the United States, report the following resolutions, and recommend their adoption by the Senate :

*Resolved*, That the Senate can discover no trace, throughout the long correspondence which has been submitted to them, between the Governments of Great Britain and the United States, of any understanding, express or implied, much less of any "explicit agreement," such as is now alleged, that the territory in dispute between them on the North-eastern boundary of the latter, shall be placed and remain under the exclusive jurisdiction of Her Britannic Majesty's Government until the settlement of the question; on the contrary, it appears that there was, and is, a clear subsisting understanding between the parties, under which they have both acted, that, until this question shall be finally determined, each of them shall refrain from the exercise of jurisdiction over any portion of the disputed territory, except such parts of it as may have been in the actual possession of the one or the other party.

*Resolved*, That whilst the United States are bound, in good faith, to comply with this understanding, during the pendency of negotiations, the Senate cannot perceive that the State of Maine has violated the spirit of it by merely sending under the authority of the Legislature, her land agent, with a sufficient force, into the disputed territory, for the sole purpose of expelling lawless trespassers engaged in impairing its value by cutting down the timber; both parties having a common right, and being bound by common duty, to expel such intruders from a territory to which each claims title, taking care, however, to retire within their acknowledged limits when this single object shall have been accomplished.

*Resolved*, That should Her Britannic Majesty's Government in violation of the clear understanding between the parties, persist in carrying its avowed determination into execution, and attempt, by military force, to assume exclusive jurisdiction over the disputed territory, all of which, they firmly believe, rightfully belongs to the State of Maine,

the exigency, in the opinion of the Senate, will then have occurred, rendering it the imperative duty of the President, under the Constitution and the laws, to call forth the militia, and employ the military force of the United States, for the purpose of repelling such an invasion. And in this event, the Senate will cordially co-operate with and sustain the President in defending the rights of the country.

*Resolved*, That should the British authorities refrain from attempting a military occupation of the territory in dispute, and from enforcing their claim to exclusive jurisdiction over it by arms, that then, in the opinion of the Senate, the State of Maine ought, on her part, to pursue a course of similar forbearance. And should she refuse to do so, and determine to settle the controversy for herself by force, the adjustment of which is entrusted under the Constitution to the Federal Government, in such an event there will be no obligation imposed on that Government to sustain her by military aid.

The report was ordered to be printed, and made the special order for to-morrow.

## THE BOUNDARY TROUBLES.

The following is the Report made to the House of Representatives on Thursday, February 2, by Mr. HOWARD, Chairman of the Committee on Foreign Relations:

The Committee on Foreign Affairs, to which has been referred two messages from the President of the United States, enclosing sundry papers relating to the disturbances upon the Aroostook river, in the State of Maine, report:

That they have examined the papers submitted to them by the House with great care, and will offer such reflections upon them as the limited time for the preparation of this report will admit. The very near approach of the termination of the present Congress, and the desire of the Committee that as much time as possible should be afforded to the House for the examination of the bill herewith reported, are considerations of such a powerful nature, that some incidental matters, connected with the subject, cannot be fully investigated. The main points, however, of the controversy, are not numerous, and upon them the opinion of the Committee is clear and decided. The position assumed by the President in his message, is correct, and ought to be sustained, if necessary, by the legislative power of Congress.

It is well known that an informal arrangement or understanding has existed for many years past, between the United States and Great Britain, relating to the territory in dispute between them, and having for its object the avoidance of clashing authorities, calculated to endanger the peace of the two nations.

The Committee have not time to give a detailed and historical statement of the origin and progress of this arrangement, the examination of which might perhaps elucidate the cause of the strange error into which the British Government is represented, by its agents in this country, to have fallen with respect to its provisions. Suffice it to say, that it never appears to have gone further, in its greatest extent, than to adopt the basis of the "*uti possidetis*," leaving each party to the continued exercise of the jurisdiction which it had previously maintained in practice. The idea which is occasionally suggested in some of the British documents, that, prior to the peace of 1783, the Government of Great Britain was in possession of the whole country, and,

therefore, that this constructive possession must be considered as continuing until she is divested of it with her own consent, is one which the United States can never sanction, or even listen to, without strong repugnance. It implies that the people of the United States hold their country by a grant from the British Crown, made in the treaty of 1783—a doctrine which was successfully resisted by the ministers of the United States, even when it was advanced by remote implication, prior to the signature of that treaty by their refusing to treat with the British ministers until their credentials were changed. At a subsequent period of our history, the same doctrine was advanced in argument; and at that period, also, was, as it must ever be, met with instant contradiction. The people of the United States hold their country by virtue of the declaration of the 4th July, 1776; and the treaty of 1783 did nothing more than arrange the boundary lines between the two nations, independent of each other in fact and in right. So far, therefore, as the claim of Great Britain to the jurisdiction over the unsettled parts of Maine is founded upon the twice exploded theory that she is the rightful sovereign of all that she has not granted away, it cannot be submitted to without sacrifices of honor, which the American nation never will make.

When the discussion became active between the two Governments, as to their respective rights to the territory now in dispute, the greater part of it was, and indeed still remains, uninhabited by permanent settlers. Here and there a small settlement could be found, consisting in some cases of a single house, and in others of more than one, placed near each other for the convenience of the inhabitants. The extent of the arrangement between the two Governments does not appear, as construed by the American Government, to have gone further than the recognition of the jurisdiction of each over the people and lands then operated upon by it. If these inhabitants had taken out the titles to their lands from either one Government or the other, and were in the habit of resorting to its judicial authority for the preservation of order, then they were to continue so to do until the question of ultimate ownership should be finally decided in some mode satisfactory to both Governments. The propriety of this arrangement will not be questioned by the Committee. If it left to the British Government the jurisdiction over the inhabitants, along the military road which leads from Halifax to Quebec, and thereby furnished it with a motive for procrastinating the controversy, inasmuch as it continued in the enjoyment of nearly all that rendered the country valuable as a British pos-

session, it also furnished a strong proof of the desire of the American Government to deal fairly and liberally with its antagonist in the argument. Demonstrating, in this conclusive manner, that it was not influenced by a captious spirit of discontent, the Government of the United States derived from this state of the case a right to appeal to the British Government, to expedite the final adjustment of the controversy, and to claim, in the mean time, the full benefit, on its part, of an arrangement which, perhaps, gave to its adversary more than an equal share of advantages. But the arrangement has been entirely misunderstood or misconstrued, if the Lieutenant Governor of New Brunswick be correct in his exposition of the orders under which he is acting.

The United States never did, and never can, consent that the exclusive jurisdiction of the whole territory in dispute shall be consigned to the care of any officer of the British Government. The pretension now advanced is as unreasonable in itself as it is unsustained by any agreement between the two Governments. Supposing that the parties to the controversy stand upon an equal footing as to their rights, (and there is none other in the case, except the inadmissible one formerly alluded to), the United States have as much reason to expect that Great Britain will yield to them the exclusive jurisdiction of the whole of the contested territory, together with the care and custody of the timber and other public property, as she has to require from us such an extravagant concession. On the part of the United States, it has never been claimed or asked, as far as the Committee are informed; and the true position of the President now is, that he resists the application of a principle, which no Executive of this country ever adopted as his guide. It has not been asked of Great Britain nor can it be submitted to from her. What the United States ask from others, they are always willing to grant, nor can they grant what it would be deemed unreasonable to ask.

That portion of the territory in which the recent and present disturbances exist, has been, for a number of years past, subject to the laws of Maine, and, before the separation of Maine from Massachusetts, was under the control of the latter. In December, 1807, Massachusetts conveyed one township, lying on both sides of the Aroostook, and near the meridian line from the source of the St. Croix, according to a selection, survey, and plan made under a resolve passed in March, 1806. In January, 1808, she conveyed ten thousand acres, lying west of the aforesaid township, and on both sides of the Aroostook, pursu-

ant to a survey and plan made under the same resolve. This jurisdiction has been continued, through the medium of land agents, ever since that time; and the settlers, who have been there for a number of years past, (certainly since 1822,) have always, in practice, held their property under grants from Massachusetts and Maine.

The part remaining unsettled has been applied to no other useful purpose than to use the timber, in which it is very productive; and the State of Massachusetts has been in the practice of granting licenses to her people to cut timber from the public domain. The exercise of jurisdiction was as perfect as the nature of the country would permit. The mere fact of granting licenses to cut timber to certain individuals shows that the preservation of the timber was held to be an object of great consequence, and drew after it the incidental right of refusing to permit the timber to be cut down, whenever it was thought wise to do so; or of taking other measures for its preservation, by driving off trespassers, or punishing them by civil process. This right Maine derived from Massachusetts. Every State Government in the Union has a right to regulate the landed interest, whether public or private, within its limits; and Maine stands upon the same footing, unless as to such parts of it as are decided not to be under its jurisdiction by the exercise of the constitutional powers of the Federal Government. But, as has been already observed, no proceeding or agreement of the Federal Government can be found which did not recognise an actual jurisdiction, just such as that now claimed and enforced by Maine. Whether the Legislature of that State ought or ought not in courtesy to the Federal Government, to have invoked its interposition before driving off the trespassers with a strong hand, is a question which the Committee deem it unnecessary to examine; because the pretensions advanced by the Lieutenant Governor of New Brunswick equally exclude the right of the United States and Maine to interfere. If the United States had been applied to, and the urgency of the case had rendered a prompt and forcible interposition necessary to remove those lawless trespassers who were equally the enemies of both Governments, the same opposition would have been made to such interference by the Lieutenant Governor of New Brunswick, and the same question arisen as in the present case.

The conflicting claims of Great Britain and the United States are now presented in antagonistical positions to each other, and the subordinate question as to the manner in which they have thus been brought in direct opposition is not of sufficient importance to require strict



examination. If it were, it might be argued that the conduct of the Lieutenant Governor of New Brunswick in directing a boom to be placed across the mouth of the Aroostook river, for the purpose of intercepting, seizing, and selling the timber which has been cut, is no sufficient satisfaction to the State of Maine, which may desire to preserve its own timber, whilst it argues such remissness on the part of the British authorities, over their own people, as might well have induced the State of Maine to enforce her own laws. If the Committee are right in the view which they have taken of the arrangement between the United States and Great Britain, there is nothing in it to impair, but, on the contrary, every thing to ratify the jurisdiction of Maine over that part of her territory where it had long been familiar, and the interference of the Lieutenant Governor of New Brunswick is a violation of the existing understanding. In the first proceeding of Maine, the force sent to arrest and drive off the numerous and armed band of trespassers who were depredating upon the public property, appears to have been in the nature of a civil process, in execution of the law of the land. The power of a ministerial officer, such as a sheriff, for example, to compel obedience to the law, and to summon to his aid a sufficient portion of the "power of the country" to subdue opposition, is well known both to American and British jurisprudence, and is sanctioned by early laws in the history of England. The riotous and desperate character of the marauders upon the Aroostook, is sufficiently manifested by the fact of their breaking open an arsenal upon the British territory, in order to supply themselves with an additional quantity of arms, to enable themselves to resist and repel the party which was approaching, under a civil officer, to require submission to the laws.

The proclamation of the Lieutenant Governor of New Brunswick was issued before any steps were taken by Maine to sustain the civil by the military power, and was directed against the interference of the ministerial officer of the law, acting in strict conformity with what are believed to be fundamental principles of British as well as American law. The first appeal to military force was made by him, and the subsequent proceedings of Maine are defensive merely. The pretension of the Lieutenant Governor of New Brunswick excludes the civil as well as military power of Maine and the United States from interfering to preserve order in this seat of the ancient jurisdiction of Massachusetts; and would compel the United States and Maine to rely upon the justice, the vigilance, or the generosity of the British authorities for

the maintenance of good order and the enforcement of the laws, in a country where nothing but a naked claim can be said to exist upon the part of the British Government. It demands of Maine that she should divest herself of a jurisdiction practically established and ascertained, and transfer it to Great Britain. It demands of the United States that an arrangement, alleged to have been made between the two Governments, of the existence of which the United States are unconscious, should be summarily carried out, according to the construction which one of the parties is said to have placed upon it, and without giving to the other party an opportunity to contest such construction. It is difficult, in the opinion of the Committee, to believe that the Government of Great Britain maintains such an interpretation of that arrangement, and thus converts what was intended for the preservation of friendly feelings into a source of great and instant discord. But the assertion of the Lieutenant Governor of New Brunswick has been twice officially, deliberately, and publicly made, that he is acting under the instructions of his Government; a fact of which he and his Government can be the only judges. The execution of these orders is incompatible with the honor of the United States. The Executive branch of the Government has expressed this opinion, and in this opinion the Committee fully concur. The sudden execution of these orders may bring on a crisis for which as much preparation ought to be made as the short time remaining of the present session of Congress will permit; and the bill which is herewith submitted is intended to accomplish that purpose.

The Committee refer with much pleasure to the efforts which have been made by the British Minister at Washington, evidenced by the memorandum of a conference between him and the Secretary of the State, to avert the events which seem to be approaching. If the Lieutenant Governor of New Brunswick shall desist from any attempt to take or hold military possession of the whole of the disputed territory, it will be easy to restore things to their former condition. If he shall determine to suspend further movements until the decision of the British Government be known, it will be for that Government to say what shall be the political relations between the United States and Great Britain; whether the friendship which now so happily prevails between the two nations, for the preservation of which the essential interests of both loudly call, shall be suddenly and rudely broken by assuming a principle as a ground of action to which the United States cannot submit.

The Committee cannot but entertain the hope that no precipitate counsels on the part of the Lieutenant Governor of New Brunswick will deprive the Government of Great Britain of an opportunity of explaining, before any more serious difficulties shall have occurred, orders which he is believed to have misunderstood. In this event, all immediate difficulties will disappear. The insuperable objection to the military occupation of the disputed territory by Great Britain, requires, in common fairness, that no attempt of the kind should be made by Maine or the United States. Having accomplished her intention of driving off or arresting the trespassers upon the Aroostook, and thus enforcing her laws, Maine will, it is not to be doubted, be satisfied with this vindication of her sovereignty, and withdraw the military force which is now in arms to sustain the civil authority and repel invasion.

A contemporaneous cessation of measures by Maine and New Brunswick will compromise the honor of neither; and time will be thus afforded for the British Government to select the position which it intends to occupy in the relations between it and the United States. If any motive were necessary to induce Maine to adopt a course so manifestly proper, it would be found in the prompt response of the Executive of the United States to the appeal made to it at the present crisis, and the jealous sensibility which has been manifested for the protection of her rights, by spreading over them the ample powers of the Federal Union.

The Committee ought, perhaps, here to close this report. But the anxiety which they feel that no measure should be left unemployed to preserve peace between the United States and Great Britain, by removing, not only temporarily but permanently, the causes of discontent between them, induces them to offer another recommendation to the House. It is, the expression of an opinion by the House, sustained by a legislative provision, that a special embassy should be sent to England, for the purpose of co-operating with the resident minister there, in endeavoring to adjust this long pending controversy. The precedents for this measure in our history are numerous and encouraging.

The object of such an embassy is, to express a deep conviction on the part of the Government of the extreme urgency of the case, and the absolute necessity of adjusting existing difficulties. The ordinary forms of negotiation appear insufficient to rouse the British Government to the danger that the two nations may find themselves involved

in war, notwithstanding the desire of the Governments of both to avoid it; and the step proposed would manifest to the world, at all events, that the United States are sincerely anxious to exert every means in their power to maintain the most amicable relations with a government and people, so eminently entitled to the respect and regard of every civilized nation on the globe.

The Committee are conscious that some of the provisions of the bill herewith reported, would more properly have emanated from some of the other Committees of the House, upon whose jurisdiction they are reluctant to encroach; but the few days which remain of this session would not have permitted any delay, with a view of referring these subjects to other Committees, with the slightest hope of obtaining any action on the part of the House. They submit the whole matter, therefore, as the result of their anxious reflections, to the better judgment of the House.

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The following bill was also reported from the Committee on Foreign Relations:

#### A BILL

Giving to the President of the United States additional powers for the defence of the United States, in cases, against invasion, and for other purposes.

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,* That the President of the United States be, and he hereby is, authorized to resist any attempt on the part of Great Britain to enforce, by arms her claim to exclusive jurisdiction over that part of the State of Maine, which is in dispute between the United States and Great Britain; and, for that purpose, to employ the naval and military forces of the United States and such portions of the militia as he may deem it advisable to call into service.

SEC. 2. *And be it further enacted,* That in the event of actual invasion of the territory of the United States by any foreign Power, or of imminent danger of such invasion discovered, in his opinion, to exist, before Congress can be convened to act upon the subject, the President of the United States be, and he hereby is, authorized, in addition to the present military establishment of the United States, to

raise a provisional force, to be enlisted for five years, or during the continuance of hostilities with any foreign Power, not exceeding one regiment of dragoons, one regiment of artillery, two regiments of riflemen, and sixteen regiments of infantry, to be organized, in all respects, like the corresponding regiments now in service; and, also, to appoint not exceeding one major general, four brigadier generals, and not exceeding one surgeon and one assistant surgeon for each new regiment; the regiments, general, and medical officers to be subject to the same laws and rules, and to be entitled to the same benefits, of every kind, with the like corps and officers now in service; and it shall be the duty of the President to discharge the troops which may be raised by virtue of this act whenever the occasion for them, as defined by this act, shall cease to exist.

SEC. 3. *And be it further enacted*, That, in the event of either of the contingencies provided in the first section of this act, the President of the United States shall be authorized to complete the public armed vessels now authorized by law, and to equip, man, and employ, in actual service, all the naval force of the United States.

SEC. 4. *And be it further enacted*, That the sum of — millions of dollars is hereby appropriated and placed at his disposal for the purpose of executing the provisions of this act; to provide for which the Secretary of the Treasury is authorized to borrow money on the credit of the United States, and to cause to be issued certificates of stock, signed by the Register of the Treasury, for the sum to be borrowed, or any part thereof; and the same to be sold upon the best terms that may be offered, after public notice for proposals for the same: *Provided*, That no engagement or contract shall be entered into which shall preclude the United States from reimbursing any sum or sums thus borrowed after the expiration of five years from the first of January next; and that the rate of interest shall not exceed five per cent. payable semi-annually.

SEC. 5. *And be it further enacted*, That the sum of eighteen thousand dollars be, and the same is hereby appropriated, out of any money in the Treasury, not otherwise appropriated, for outfit and salary of a special minister to Great Britain: *Provided*, The President of the United States shall deem it expedient to appoint the same.

The Bill and Report were referred to the Committee of the whole on the state of the Union, and made the special order of the day for Friday at eleven o'clock.

WASHINGTON, Feb. 27, 1839.

*To the House of Representatives of the United States :*

I transmit to Congress copies of various other documents received from the Governor of Maine, relating to the dispute between that State and the province of New Brunswick, which formed the subject of my Message on the 26th inst. and also a copy of a memorandum signed by the Secretary of State of the United States and Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary near the United States, of the terms upon which it is believed all collision can be avoided on the frontier, consistently with, and respecting the claims on either side. As the British Minister acts without specific authority from his Government, it will be observed, that this memorandum has but the force of recommendation on the Provincial authorities and on the Government of the State.

M. VAN BUREN.

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#### MEMORANDUM.

Her Majesty's authorities consider it to have been understood and agreed upon by the two Governments that the territory in dispute between Great Britain and the United States, on the North eastern frontier, should remain exclusively under British jurisdiction until the final settlement of the boundary question.

The United States Government have not understood the above agreement in the same sense, but consider, on the contrary, that there has been no agreement whatever for the exercise, by Great Britain, of exclusive jurisdiction over the disputed territory, or any portion thereof, but a mutual understanding that, pending the negotiation, the jurisdiction then exercised by either party, over small portions of the territory in dispute, should not be enlarged, but be continued merely for the preservation of local tranquillity and the public property, both forbearing as far as practicable to exert any authority, and, when any should be exercised by either, placing upon the conduct of each the most favorable construction.

A complete understanding upon the question, thus placed at issue, of present jurisdiction, can only be arrived at by friendly discussion between the Governments of the United States and Great Britain ; and, as it is confidently hoped that there will be an early settlement of the question, this subordinate point of distinction can be of but little moment.

In the mean time the Governor of the Province of New Brunswick and the Government of the State of Maine will act as follows : Her Majesty's officers will not seek to expel by military force the armed party which has been sent by Maine into the district bordering on the Aroostook river ; but the Government of Maine will voluntarily, and without needless delay, withdraw beyond the bounds of the disputed territory any armed force now within them ; and, if future necessity should arise for dispersing notorious trespassers, or protecting public property from depredation by armed force, the operation shall be conducted by concert, jointly or separately, according to agreements between the Governments of Maine and New Brunswick.

The civil officers in the service, respectively, of New Brunswick and Maine, who have been taken into custody by the opposite parties, shall be released.

Nothing in this memorandum shall be construed to fortify or to weaken in any respect whatever, the claim of either party to the ultimate possession of the disputed territory.

The Minister Plenipotentiary of Her Britannic Majesty having no specific authority to make any arrangement on the subject, the undersigned can only recommend, as they now earnestly do, to the Governments of New Brunswick and Maine, to regulate their future proceedings according to the terms hereinbefore set forth, until the final settlement of the territorial dispute, or until the Governments of the United States and Great Britain shall come to some definite conclusion on the subordinate point upon which they are now at issue.

JOHN FORSYTH,

*Secretary of State of the United States of North America.*

H. S. FOX,

*H. B. M. Envoy Extraordinary and Minister Plenipotentiary.*

WASHINGTON, Feb. 27, 1830.



## IN SENATE OF THE UNITED STATES.

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JULY 4, 1838.

Submitted, and ordered to be printed, and that 20,000 additional copies be furnished for the use of the Senate

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Mr. BUCHANAN submitted the following  
REPORT :

*The Committee on Foreign Relations, to which was referred the "bill to provide for surveying the north eastern boundary line of the United States, according to the provisions of the treaty of peace of seventeen hundred and eighty-three," have had the same under consideration, and now report :*

That the first section of this bill directs "the President of the United States to cause the boundary line between the United States and the adjacent British provinces, from the source of the St. Croix river directly north to the highlands which divide the waters that fall into the Atlantic ocean from those which fall into the river St. Lawrence, thence along said highlands from the northwest angle of Nova Scotia to the northwesternmost head of Connecticut river, as particularly defined in the treaty of peace concluded at Paris the third day of September, 1783, to be accurately surveyed and marked, and suitable monuments to be erected thereon, at such points as may be deemed necessary and important."

The second section provides for the appointment of a commissioner and surveyor by the President, by and with the advice and consent of the Senate, "who may employ such assistants, under the direction of the President, as shall be necessary, and who shall make an exact return of their proceedings to the President, with a correct map of the country over which said line passes, exhibiting the prominent points of its topography and the location of the marks and monuments by them made and erected."

The third and last section merely provides for the compensation of the commissioner and surveyor.

This bill, then, proposes that Congress shall create a commission, independently of Great Britain, to run and mark the north eastern boundary of the United States, conterminous with that of New Brunswick and Canada, provinces of the British empire. It asks no previous consent from Great Britain; it does not require that Great Britain should become a party to the survey; and yet that country has a common interest with the United States in the correct establishment of this boundary, according to the treaty. It would be premature and inexpedient, the Committee believe, to resort to such a course of separate action towards a neighboring and friendly power, between which and the United States there is a reciprocal desire to maintain the most friendly relations, until every other means of amicably adjusting the dispute shall be exhausted. Before the committee could recommend the adoption of such a measure to the Senate, they ought to be satisfied, beyond a reasonable doubt, first, that the United States have a clear title to the disputed territory which would be embraced within their limits by the proposed survey; and, secondly, that no other and more friendly expedient remains untried of bringing this long pending controversy to a conclusion.

The committee will, therefore, proceed to consider the question under this two-fold aspect. And, first, in regard to our title.

This title depends altogether upon the correct construction of the definitive treaty of peace between the United States and his Britannic Majesty, concluded at Paris on the third day of September, one thousand seven hundred and eighty-three.

By the first article of this treaty, "his Britannic Majesty acknowledges the said United States, viz: New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign, and independent States; that he treats with them as such; and, for himself, his heirs, and successors, relinquishes all claims to the Government, propriety, and territorial rights of the same, and every part thereof."

The United States had declared their independence almost seven years previous to the date of the treaty. They had maintained this declaration before the world; and the treaty is not only a solemn recognition of that independence by Great Britain, but an express acknowledgment that she treated with them as free, sovereign, and independent States. We were equals treating with an equal. Great Britain was not a superior assigning territory to an inferior. No superiority wa

claimed on the one side, or would have been acknowledged on the other. Great Britain then claimed no such prerogative as she now asserts, of assigning an appropriate boundary to the United States, as a new power, formerly under her dominion. The treaty must, therefore, be construed as a solemn agreement entered into by one sovereign and independent nation with another, equally sovereign and independent.

It was not necessary expressly to have prescribed the limits of the United States by the treaty. At its date, the boundaries of each of the thirteen States were well known. The first article acknowledged each of them to be sovereign and independent, and relinquished "all claim on the part of the British King to the Government, propriety, and territorial rights of the same, and every part thereof;" and this would have been sufficient.

The commissioners who framed the treaty were, however, not content with such a general recognition. Its second article proves their desire to prescribe the limits of our boundary in a manner so precise and specific, as forever to prevent all disputes upon the subject. This second article is as follows:

ART. 2. "*And that all disputes which might arise in future, on the subject of the boundaries of the said United States, may be prevented,* it is hereby agreed and declared, that the following are, and shall be, their boundaries, viz: *from the northwest angle of Nova Scotia, viz: that angle which is formed by a line drawn due north from the source of St. Croix river to the highlands; along the said highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river,*" &c. It is unnecessary, here, to repeat any more of the treaty description.

In every delineation of territory, the all-important point is to fix the place of beginning with the greatest possible precision and certainty. To prevent all dispute thereafter, this was done by the commissioners. "The northwest angle of Nova Scotia" was a well known point. This can be clearly established by the most authentic official documents, which, it will conclusively appear, from the highest intrinsic evidence, were before the commissioners at the time they formed the treaty. It is true that this point had never been fixed by actual survey, nor had it been marked by the erection of any monument; but that it could be found upon the ground at the intersection of two clearly defined lines was a mathematical truth, susceptible of demonstration. This north-

west angle of Nova Scotia, which was notorious, although the very spot had not been ascertained, was fixed upon as the place of beginning of our boundary, in order to prevent all future disputes; and yet, strange as it may appear, this is the very point now contested by the British Government. Whether with any good reason, it will be the task of the committee to inquire.

It is agreed by both parties that the map, called Mitchell's map, a copy of which is annexed to this report, was the one used by the commissioners at the formation of the treaty. It was published in 1755, and bears upon its face an official stamp; having been undertaken with the approbation and at the request of the Lords Commissioners for Trade and Plantations. Whoever may inspect this map will, at once, perceive the natural formation of that region. The river St. Lawrence runs from the southwest towards the northeast; whilst numerous tributaries rising in the highlands to the south of it, and, passing north through its valley, empty themselves into the main stream. These tributaries are all necessarily short; because the highlands from which they flow run at no great distance from the river, and in a parallel direction to it, throughout its whole course. From these highlands, on the south, proceed the head waters of the Connecticut, the Androscoggin, the Kennebeck, the Penobscot, the St. John, and the Ristigouche, all flowing into the Atlantic ocean, through different bays. And here it may be observed, that there is not a single stream, which rises on the south side of these highlands, throughout this whole region, which does not first empty itself into some Atlantic bay; not one of them flows directly into the main ocean. Such is the natural formation: Highlands running in a parallel direction with the St. Lawrence, and dividing the streams which fall into that river on the north, from those which seek the Atlantic ocean in the south. In 1755, when Mitchell's map was published, the British possessions in North America did not extend north of the St. Lawrence. At that period, it will appear from the map that the northwest angle of Nova Scotia was to be found on the St. Lawrence, at the point intersected by the line running due north from the source of the St. Croix. This north line is distinctly marked upon the map. On the west of it, the words "New England" are printed in large letters, and on the east "Nova Scotia."

If this map were, alone, to be the guide, and if the place of beginning of our boundary, mentioned in the treaty, had been simply "the northwest angle of Nova Scotia," without further qualification, the State of Maine would have extended to the St. Lawrence. In what

manner was this northwest angle of Nova Scotia brought as far south as the highlands separating the streams which flow in opposite directions to the St. Lawrence and to the Atlantic? In February, 1763, Great Britain acquired Canada from France by treaty. Canada, New England, and Nova Scotia being then all subject to the British Crown, the King thought proper, in creating the province of Quebec, to extend its limits south of the St. Lawrence, so as to include the valley of that river. The reasons were obvious. Quebec, the seat of Government, was situate on its northern shore. It was one of the most important cities in North America, and the trade and business of the people along the numerous streams which flowed into the St. Lawrence from the highlands south of it, would naturally centre there. Besides, it was obviously convenient that the limits of the different provinces should be regulated, as far as practicable, by the course of the rivers; and it would have been highly inconvenient that the valley south of the St. Lawrence, within sight of the capital of the province of Quebec, and necessarily having constant intercourse with the opposite shore, should continue attached to remote and distant Governments. The King, therefore, by his proclamation, dated on the 7th of October, 1763, declared that the Government of Quebec should be bounded, south of the St. Lawrence, by a line crossing that river and the Lake Champlain, in forty-five degrees of north latitude, and passing "along the highlands which divide the rivers that empty themselves into the said river St. Lawrence, from those which fall into the sea, and also along the north coast of the Bay des Chaleurs and the coast of the Gulf of St. Lawrence, to Cape Rosiers." Thus the province of Quebec was extended south, so as to include the vale of the St. Lawrence, and its southern line was fixed along the highlands from whence its tributaries flowed. New England and Nova Scotia were deprived of thus much of their former territory; but they still retained all that portion of it watered by streams whose sources were on the south side of these highlands, and which emptied themselves into the sea. This was a natural and proper division. After the date of this proclamation, where was "the northwest angle of Nova Scotia" to be found? Can doubt or difficulty rest upon this question? We must look for it on the line running north from the source of the St. Croix, at the point where this line intersects the southern line of the province of Quebec, "running along the highlands which divide the rivers that empty themselves into the said river St. Lawrence, from those which fall into the sea. This point is, and necessarily must be, the northwest angle of Nova

Scotia. It is demonstration itself. To run these two well described lines upon the face of the earth, is to ascertain that angle. The commissioners, therefore, who formed the treaty, well and wisely placed the beginning of our boundary at a point which could be rendered absolutely certain, by merely running these two lines. Those, who choose to examine Mitchell's map, will find that the due north line marked upon it from the source of the St. Croix, crosses the southern line of the province of Quebec, in these dividing highlands, about the forty-eighth degree of north latitude.

But the British Government deemed it proper to fix the boundaries of the province of Quebec, even with more solemnity than by royal proclamation. This was done by an act of Parliament passed in the year 1774, "for making more effectual provision for the Government of the province of Quebec, in North America." By this act, the separating boundary between that province on the north, and Nova Scotia and New England on the south, was still more clearly and distinctly defined than it had been in the proclamation.

The following language is employed, to wit: "bounded on the south by a line from the bay of Chaleurs, along the highlands which divide the rivers that empty themselves into the river St. Lawrence, from those which fall into the sea, to a point in forty-five degrees of northern latitude on the eastern bank of the river Connecticut." In both the proclamation, and the act of Parliament, the dividing highlands are described in the very same language. "The highlands which divide the rivers that empty themselves into the river St. Lawrence, from those which fall into the sea." The termini of this boundary are more precisely fixed by the act of Parliament than by the proclamation. This act makes the southern point of the line commence on the eastern bank of the river Connecticut, in latitude forty-five, and terminate at the Bay of Chaleurs. Its extremities are two well known natural objects. This bay is in latitude about forty-eight. The act of Parliament seems to have been prepared with great deliberation. It was intended to fix the boundaries between vast provinces of the same empire; and no act of legislation demands greater care and attention. The Bay of Chaleurs on the north, in latitude forty-eight, and a portion on the Connecticut, in latitude forty-five at the south, were to be the two extremities; and the intermediate line was to pass along the highlands running between these two points, which divide the rivers that empty themselves into the St. Lawrence on the one side, from those falling into the sea upon the other. After this

act of Parliament, is it possible to conceive of a more extraordinary pretension, than it would have been in the Government of Quebec to have claimed jurisdiction, not only to these dividing highlands whence streams flow into the St. Lawrence, but a hundred miles south and east of them, embracing a region of country watered by a large river, the St. John, and its numerous tributaries flowing into the sea? Such a claim would have broken down the barriers between these provinces, erected with so much care by the act of Parliament, and made rivers running north into the St. Lawrence, mean the same thing as rivers running south into the ocean. And yet the present attempt of the British Government to make Mars hill the northwest angle of Nova Scotia rests upon no other or better principle, as will be shown hereafter.

The commissions of the different Governors of Quebec, in describing the boundaries of their jurisdiction, followed the language of the proclamation of 1763, until after the passage of the act of Parliament in 1774. The first commission which subsequently issued was to Guy Carlton, Esq., in the same year, and it adopts the language of that act. The southern limits of his jurisdiction are described in its language "to be a line from the bay of Chaleurs, along the highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the sea, to a point in forty-five degrees of northern latitude, on the eastern bank of the river Connecticut." Thus this province had for its southern boundary highlands dividing streams running in opposite directions between a bay, and a fixed point on a river. Was ever boundary better defined?

It would be a waste of time to recite the numerous commissions which have issued to the Governors of Quebec, of Nova Scotia, and, after this province was divided, in 1784, of New Brunswick; all speaking the same language. The western limit of Nova Scotia, and afterwards of New Brunswick, is uniformly described to run from that point where a line drawn due north from the source of the river St. Croix would intersect the southern boundary of Quebec, and from thence "to the northward by the said boundary as far as the western extremity of the Bay des Chaleurs." These commissions place the natural construction upon one expression, which, in the act of Parliament, at first view, might appear vague. In it the Bay of Chaleurs is mentioned generally, without a special reference to any particular part of it, though from the whole context the evident meaning was, the western extremity of that bay. The commissions to the Governors of Nova



Scotia, and afterwards New Brunswick, render this certain, by specifying "the western extremity of the Bay des Chaleurs."

Enough has already been shown to fix with precision what was the acknowledged southern boundary of the province of Quebec, at the date of the treaty in 1763, and what it has remained ever since. It was then clearly known to have been a line from the western extremity of the Bay of Chaleurs, to a point on the eastern bank of the Connecticut, in latitude forty-five, and running along the highlands dividing the tributaries of the St. Lawrence, from the sources of streams flowing into the sea. Where, then, was the northwest angle of Nova Scotia, known to be at the date of the treaty?

Without going back to the creation of this province, in 1621, by James the First, which the committee deem unnecessary, though it would add strength to the argument, they will content themselves with a reference to the first commission which was issued to the Governor of Nova Scotia, after the date of the proclamation of 1763. Before the proclamation, this province, as well as New England, had extended north to the St. Lawrence. After its date, it was necessary to make the commissions of the Governors correspond with the extension of the province of Quebec south of that river. Accordingly, the royal commission to Montague Wilmot, Esq. bearing date on the 21st November, 1763, limits and restrains the province of Nova Scotia, thus: "*To the northward our said province shall be bounded by the southern boundary of our province of Quebec as far as the western extremity of the Bay des Chaleurs;*" and again, to the westward "*it shall be bounded by a line drawn from Cape Sable, across the entrance of the Bay of Fundy, to the mouth of the river St. Croix, by the said river to its source, and by a line drawn due north from thence to the southern boundary of our colony of Quebec.*" The next commission, which issued to Lord William Campbell on the 11th August, 1765, changes this description only by commencing with the western instead of the northern line, thus: "*On the westward by a line drawn from Cape Sable across the entrance of the Bay of Fundy, to the mouth of the river St. Croix, by the said river to its source, and by a line drawn due north from thence to the southern boundary of our colony of Quebec, to the northward by the said boundary as far as the western extremity of the Bay des Chaleurs.*" In every commission which has issued since to all the Governors of Nova Scotia, and afterwards of New Brunswick, the same identical language has been used. On the 29th day of July, 1782, but four months previous to the conclusion of the provis-

ional treaty of peace with Great Britain, the commission granted to Governor Parr, describes the limits of Nova Scotia in precisely the same manner. And here it may be proper to observe, that the St. Croix has since been ascertained by a joint commission of the two Governments, and a monument has been erected at its source.

Were not, then, the commissioners who framed the treaty fully justified in the conviction, that when they established the point of beginning of the boundaries between the United States and Great Britain, at "the northwest angle of Nova Scotia," they were fixing it at a point long known and well established? To render assurance doubly certain, however, they describe where it is, in the very language which had been uniformly used by the British Government in proclamations, in acts of Parliament, and in numerous commissions to the Governors of Quebec and Nova Scotia. "The northwest angle of Nova Scotia," says the treaty, "is that angle which is formed by a line drawn due north from the source of St. Croix river to the highlands." To what highlands? The treaty answers, "the highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean." The northwest angle of Nova Scotia, then, is to be found in these highlands, at the point where the dividing due north line between New England and Nova Scotia, which commences at the source of the St. Croix, meets the southern boundary of the province of Quebec. The act of Parliament of 1774, was doubtless before the commissioners. They use its very language in the treaty. "Along the highlands which divide the rivers that empty themselves into the river St. Lawrence, from those which fall into the sea." The only change of this language in the treaty is, that "the Atlantic ocean," is substituted for "the sea." Both are evidently intended to convey the same meaning. The solicitude of the commissioners to preserve this highland boundary throughout between the two nations is manifest. Under the act of Parliament, the southern extremity of this line is described to be "a point in forty-five degrees of northern latitude, on the eastern bank of the river Connecticut." In the treaty it is "the northwesternmost head of Connecticut river." From thence the treaty line runs "down along the middle of that river, to the forty-fifth degree of north latitude."

Thus the British Government surrendered that small portion of the province of Quebec between the northwesternmost head of Connecticut river and the forty-fifth degree of north latitude, in order to have a continuous highland boundary from the northwest angle of Nova

Scotia, to the source of the northwesternmost head of the Connecticut. To accomplish this object, a part of what had been taken from New England, when the province of Quebec was established, in 1763, has been restored by the treaty. The great purpose was, that the entire line should consist of the highlands "which," in the language of the treaty and the act of Parliament, "divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the sea" or "the Atlantic ocean."

The committee will now proceed to show what was the construction placed upon this treaty fifteen years after its ratification, by solemn official declarations of high and responsible agents of the British Government.

To render it more manifest that these declarations are wholly inconsistent with the present claim of Great Britain, it will be necessary first to show precisely the extent of that claim. It comprehends all that portion of the State of Maine which lies north of the red line marked upon the map No. 2, annexed to this report, and embraces about one-third of its whole territory. This red line leaves the due north line from the source of the St. Croix, at the distance of forty miles from the monument there erected, and one hundred miles south of the north-west angle of Nova Scotia, marked A; and thence passes to the westward, not along highlands which divide the rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic ocean, according to the terms of the treaty, but along highlands dividing the rivers which flow into the St. John from those which fall into the Atlantic. These highlands are far south of the St. John; and if the British claim could be established, the whole of that river, from its source to its mouth, with all its branches, would be within British territory. Now, if it can be demonstrated that agents of high character, acting under the express authority of the British Government, several years after the date of the treaty, have expressly admitted, in their official arguments and correspondence, that this north line from the source of the St. Croix, not only crosses the St. John, but runs as far north as the streams emptying into the Bay of Chaleurs, what ought to be thought of this recent pretension?

A short time after the conclusion of the treaty a question arose between the two Governments what river was intended by the St. Croix of the treaty. In order to determine this question, commissioners were appointed under the fifth article of the treaty of November, 1794, commonly called Jay's treaty. Ward Chipman, Esq., the agent of the

British Government, contended that the true source of the St. Croix was at the head of the Scoudiac lakes, at the point marked W on the second map. In his argument in 1797, to establish this position; and to defeat the position taken by the United States, he expressly admits that "this north line [from the source of the St. Croix to the treaty highlands] must of necessity cross the river St. John." Admitting this fact, his leading purpose seems to have been to remove this line as far west as he could, so that it might cross the St. John at as great a distance from its mouth as possible, and thus embrace as much of its course as was attainable within British territory. In prosecuting his argument, he says, "but if a north line is traced from the source of the Cheputnatecook, (as insisted upon by the United States,) it will not only cross the river St. John, within about fifty miles from Fredericton, the metropolis of New Brunswick, but will cut off the sources of the rivers which fall into the Bay of Chaleurs, if not of many others, probably the Mirramichi among them, which fall in the Gulf of St. Lawrence." Thus it appears that, in 1797, the British Government had never thought of contending that the highlands of the treaty were to be found south of the St. John, or even south of the sources of the streams which empty into the Bay of Chaleurs.

Robert Liston, Esq., at the time of these proceedings, was his Britannic Majesty's minister to the United States. He was consulted by Mr. Chipman on the propriety of acceding to a proposition made to him by the agent of the United States. This proposition need not be stated. Mr. Liston in his reply, dated at Providence, on the 23d October, 1798, advises Mr. Chipman to accede to the proposition, because "it would give an addition of territory to the province of New Brunswick, together with a greater extent of navigation on St. John's river." The British Government now claim the whole river, and all its tributaries, from its source to its mouth.

The Committee might here enumerate, if they deemed it necessary, the numerous maps of this region which were published in England, between the proclamation of 1763 and the treaty of 1783, and subsequently until after the treaty of Ghent in 1814, embracing a period of more than half a century; in all of which, without a single exception known to the Committee, the western line of the province of Nova Scotia, afterwards New Brunswick, crosses the river St. John, and the northwestern angle of Nova Scotia is placed north of that river.

Previous to the treaty of Ghent, the British Government had become convinced of the great importance of having a direct communication,

within their own territory, between their provinces of Nova Scotia and New Brunswick, and the city of Quebec. It will be seen from an inspection of the map No. 2, that the territory of the State of Maine, now in dispute, intercepts this communication. It was one object of the British commissioners at Ghent, to obtain a cession of this territory. They did indeed make a faint and feeble suggestion that our title was doubtful; but this was not seriously urged. As the occasion was solemn and the object one of great importance, can any person suppose that if they had even entertained doubts where "the northwest angle of Nova Scotia," was to be found, they would not then have earnestly insisted on the pretension which they now so seriously maintain? From the date of the treaty of 1783, until the conferences at Ghent in 1814, during a period of more than thirty years, our title was unquestioned, as it still remains unquestionable.

In a protocol of August 8, 1814, the British commissioners stated the following as one among other subjects, upon which, it appeared to them, that the discussions between themselves and the American commissioners would be likely to turn: "A revision of the boundary line between the British and American territories, with a view to prevent future uncertainty and dispute."

In a note of the British to the American commissioners of the same date, they specify more particularly what they mean by this general proposition; and in conclusion state, "If this can be adjusted, there will then remain for discussion the arrangement of the northwestern boundary between Lake Superior and the Mississippi; the free navigation of that river; and such a variation of the line of frontier as may secure a direct communication between Quebec and Halifax."

It will be perceived that they do not propose to ascertain and fix a line previously agreed upon, by the treaty of 1783, but to vary that line in such a manner as to secure a direct communication between Quebec and Halifax. This was in substance a proposition to obtain a cession of territory, and was so considered by the American commissioners. Accordingly, on the 24th August, 1814, they replied, that "*they had no authority to cede any part of the territory of the United States; and to no stipulation to that effect will they subscribe.*"

On the 4th September, 1814, the British commissioners observe, that they are unable to reconcile this declaration with the statement previously made by the American commissioners, "that they were instructed to treat for the revision of their boundary lines," "although

the proposal left it open to them [the American commissioners] *to demand an equivalent for such cession either in frontier or otherwise.*"

They then proceed to insinuate the first doubt in regard to our title, in the following language: "The American plenipotentiaries must be aware that the boundary of the district of Maine has never been correctly ascertained; that the one asserted at present, by the American Government, by which the direct communication between Halifax and Quebec becomes interrupted, was not in contemplation of the British plenipotentiaries, who concluded the treaty of 1783; and that the greater part of the territory in question is actually unoccupied."

"The undersigned are persuaded that an arrangement on this point might be easily made, if entered into with the spirit of conciliation, without any prejudice to the interests of the District in question."

This note contains the first intimation ever made by Great Britain of any doubt as to the title of the United States to the disputed territory. The British commissioners first endeavor to obtain it by cession; and, failing in this attempt, they intimate, rather than assert, a claim to it.

This faint pretension was promptly repelled by the American commissioners in their note of September 9, 1814; and it is due to them that the committee should present their views in their own language.

"With regard to the cession of a part of the District of Maine, as to which the British plenipotentiaries are unable to reconcile the objections made by the undersigned with their previous declaration, they have the honor to observe that at the conference of the 8th ult. the British plenipotentiaries stated as one of the subjects suitable for discussion, a revision of the boundary line between the British and American territories, with a view to prevent uncertainty and dispute; and that it was on the point thus stated, that the undersigned declared that they were provided with instructions from their Government; a declaration which did not imply that they were instructed to make any cession of territory in any quarter, or to agree to a revision of the line, or to any exchange of territory where no uncertainty or dispute existed. The undersigned perceive no uncertainty or matter of doubt in the treaty of 1783, with respect to that part of the boundary of the District of Maine which would be affected by the proposal of Great Britain on that subject. They never have understood that the British plenipotentiaries, who signed that treaty, had contemplated a boundary different from that fixed by the treaty, and which requires nothing more in order to be definitely ascertained, than to be surveyed in conformity with its provisions. This subject not having been a matter of uncertainty or

dispute, the undersigned are not instructed upon it; and they can have no authority to cede any part of the State of Massachusetts, even for what the British Government might consider a fair equivalent."

Three subsequent notes, one from the British commissioners, dated 19th September, 1814, an answer from the American commissioners of the 26th September, and a reply from the British commissioners dated 8th October, seem to have contained all the subsequent correspondence on this subject. In this last note, they declare that "the British Government never required that all that portion of the State of Massachusetts, intervening between the province of New Brunswick and Quebec, should be ceded to Great Britain; but only that small portion of unsettled country, which interrupts the communication between Quebec and Halifax, there being much doubt whether it does not already belong to Great Britain." Thus it appears that in 1814, Great Britain would gladly have accepted a small portion of the disputed territory, by cession, and granted an equivalent therefor, either in frontier or otherwise; and yet, strange as it may seem, her claim has since grown to such a magnitude, that she now demands the whole by right, under the treaty of 1783.

Our commissioners at Ghent, having successfully resisted every attempt for the dismemberment of Maine, agreed upon an article with the British commissioners, not to revise or to change the ancient treaty boundary, but to run and establish upon the ground that very boundary, without any alteration, and to ascertain "the northwest angle of Nova Scotia," its place of beginning. This article is the fifth in the treaty. Under it, each party appointed a commissioner. These commissioners disagreed. According to the treaty the question was then referred to the King of the Netherlands, as umpire, whose award was rejected by the United States, because it did not even profess to decide the controversy according to the terms of the submission, but proposed a compromise, by a division of the disputed territory between the parties. Great Britain has also since announced her abandonment of this award; and now, at the end of more than half a century, after the conclusion of the treaty of 1783, the question not only remains unsettled, but threatens to involve the two nations in a dangerous dispute.

The committee will now proceed to state the principles on which Great Britain rests her claim to the disputed territory, and to give them such an answer as in their judgment they merit. She contends, in the first place, that the northwest angle of Nova Scotia, mentioned in the treaty, is to be found at Mars hill, in the line due north from the mon-



ument at the source of the St. Croix, and forty miles distant from it, and that the highlands of the treaty are those running to the westward from that point, and dividing the sources of the streams flowing north into the St. John, and south into the Penobscot. A reference to map No. 2 will clearly show the extent of this claim.

Great Britain contends, in the second place, that, if this be not the true treaty line, it is impossible to find it; that, then, the description of the treaty would become void for uncertainty; and that no mode remains of terminating the controversy, but by abandoning the treaty altogether, and agreeing upon a conventional line.

The committee trust that a sufficient answer has already been given to this last proposition. They have endeavored, and they believe successfully, to prove that the northwest angle of Nova Scotia was a well-known point, capable of being easily ascertained, ever since the proclamation of 1763, by simply running a due north line from the source of the St. Croix, to intersect the southern line of the province of Quebec, which consists of the highlands running from the western extremity of the Bay of Chaleurs to the head of Connecticut river, and dividing those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean. It is certain as the laws of nature, that these highlands, from which we know that streams do flow in opposite directions, can be found on the face of the country.

In support of the first proposition, the Government of Great Britain contends that, as the eastern boundary of the United States runs "by a line to be drawn along the middle of the river St. Croix, *from its mouth in the Bay of Fundy*, to its source;" and as the St. John, though nowhere mentioned in the treaty, has its mouth also *in the Bay of Fundy*, that, therefore, the St. John is not a river which falls into the Atlantic ocean, according to the description of the treaty. They assert, therefore, that, in looking for the highlands of the treaty, you must search for highlands south of the St. John. This brings them far south to Mars hill; and from thence, westwardly, along the highlands, marked in map No. 2, to the western boundary of the State of Maine, where they first reach the highlands which, as they contend, "divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean." The whole argument of the British Government, it will be perceived, rests upon the assumption that the St. John is not a river falling into the Atlantic ocean; because it has its mouth in the Bay of Fundy.

Now, what are the objections to this extraordinary pretension, as the committee are constrained to call it?

And, first, what is the Bay of Fundy, if it be not a part of the Atlantic ocean? A bay is a mere opening of the main ocean into the land—a mere interruption of the uniformity of the seacoast by an indentation of water. These portions of the ocean have received the name of bays, solely to distinguish them from the remainder of the vast deep, to which they belong. Would it not be the merest special pleading to contend that the Bay of Naples was not a portion of the Mediterranean, or that the Bay of Biscay was not a part of the Atlantic ocean?

Again: the description of the treaty is, "rivers which fall into the Atlantic ocean." Can it be said, with any propriety, that a river does not fall into the Atlantic, because, in reaching the main ocean, it may pass through a bay? And yet this is the British argument. The Delaware does not fall into the Atlantic, because it flows into it through the Bay of Delaware; and, for the same reason, the St. John does not fall into the Atlantic, because it flows into it through the Bay of Fundy. The committee know not how to give a serious answer to such an argument. The bare statement of it is its best refutation.

But, like all such arguments, it proves too much. If it be correct, this portion of the treaty of 1783 is rendered absurd and suicidal; and the wise and distinguished statesmen, by whom it was framed, must be condemned by posterity, for affixing their names to an instrument, in this particular, at least, absolutely void. Although they believed they would prevent "all disputes which might arise, in future, on the subject of the boundaries of the United States," by fixing their commencement at "the northwest angle of Nova Scotia," and running from thence along "the highlands which divide those rivers which empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean," yet it is absolutely certain, that there was not a single river in that whole region of country which, according to the British construction, did fall into the Atlantic ocean. They all fall into bays, without one exception. Neither can we plead ignorance as an excuse for these commissioners; because it is fully in proof, that they had Mitchell's map before them, from which the fact clearly appears. The Ristigouche does not fall into the Atlantic, because it has its mouth in the Bay of Chaleurs; nor does the Penobscot, because its mouth is in the Bay of Penobscot; nor do the Kennebeck and Androscoggin, because, after their junction, they fall into the Bay of Sagadahock. The

same is true, even of the Connecticut, because it empties itself into Long Island sound. All the rivers in that region are in the same condition with the St. John. Thus it appears, if the British argument be well founded, that the commissioners have concluded a treaty, and described highlands, whence streams proceed falling into the Atlantic, as a portion of the boundary of the United States, when, from the very face of the map before them, it is apparent no such streams exist.

There is another objection to the British claim, which is conclusive. Wherever the highlands of the treaty exist, they must be highlands from which on the north side streams proceed falling into the St. Lawrence. This portion of the description is as essential as that from their south side streams should issue falling into the Atlantic. Now the British claim abandons the former part of the description altogether. Their line of highlands commencing at Mars hill is at least a hundred miles south of the highlands whence the tributaries of the St. Lawrence flow. Between these highlands and those claimed by the British Government the broad valley of the St. John spreads itself, watered by the river of that name, and the streams which empty into it from the north and from the south. The two points on the western line of New Brunswick are distant from each other more than a hundred miles; and when you arrive at the British highlands, you find that they divide the sources of the St. John and the Penobscot, and not the sources of streams falling into the St. Lawrence and the Atlantic ocean, according to the description of the treaty.

But, even suppose it were possible to prove that neither the St. John nor any other river in that region falls into the Atlantic ocean, would this fact essentially benefit the British Government? If this portion of the description should entirely fail, would it render the other portion void? Certainly not. It might be said that the commissioners were mistaken as to where the streams emptied themselves which flowed from the southern side of the treaty highlands; as to the existence of these highlands, there could be no mistake. They are the boundary and the streams flowing from them are mere matters of description. Can they be sufficiently identified, independently of this mistake? If they can, the question is settled. Now, fortunately on this subject, no doubt can exist. Two circumstances concur to identify them, about which it is not possible there can be a mistake. According to the act of Parliament of 1774, they constitute the southern line of the province of Quebec, between the western extremity of the Bay of Chaleurs, in latitude 48, and the eastern bank of the Connecticut river, in

latitude 45; and it is equally certain that from them, all along in regular succession, streams proceed falling into the St. Lawrence. A mistake in one part of a description of boundary, has never been held to vitiate the whole, provided sufficient remains clearly to designate the intention of the parties.

But how is it possible ever to embrace Mars hill in the line of highlands running from the western extremity of the Bay of Chaleurs and forming the southern boundary of the province of Quebec? It is clear that in this, and in this alone, the northwestern angle of Nova Scotia is to be found. Mars hill is one hundred miles directly south of this line. You cannot, by any possibility, embrace that hill in this range; unless you can prove that a hill in latitude  $46\frac{1}{2}$  is part of a ridge directly north of it in latitude 48; and this, notwithstanding the whole valley of the St. John, from its southern to its northern extremity, intervenes between the two. The thing is impossible. Mars hill can never be made, by any human ingenuity, the northwest angle of Nova Scotia.

Particular emphasis has been placed by the British Government on the word "highlands," mentioned in the treaty; and comparisons have been made between the height of Mars hill and that of different parts of the highlands which divide the streams of the St. Lawrence from those of the Atlantic. Even in this they have failed; because it has been shown that the summits of the more elevated portions of the treaty highlands are considerably above that of Mars hill, the highest point on the ridge claimed by Great Britain. The committee, however, deem such a question to be wholly immaterial. When highlands are spoken of as dividing waters flowing in different directions, the meaning is plain. From the very nature of things, they must exist and slope off in opposite directions; but whether they consist of table land, of mountains, or even of swamp, still if there be a height of land, from which streams flow down in different directions, this is sufficient. It is not their elevation, but their capacity to divide, which gives them their character.

It is strange that the mere incidental mention of the Bay of Fundy in the treaty, though not at all in connexion with the St. John, which is not even named, should have been the foundation of the whole superstructure of the British argument. The reason why it was mentioned at all is obvious. It was palpably not for the purpose of creating a third class of rivers flowing into that bay, distinct from those flowing into the St. Lawrence and the Atlantic, as the British Government con-

tend ; but merely for the purpose of specifying with greater precision the commencement of the eastern boundary of the United States. Several rivers in that portion of the country had borne the name of St. Croix ; from the fact that the early French navigators, actuated by motives of piety, had planted a cross at their mouth when they were first discovered. Hence it was necessary, in specifying the beginning of our eastern boundary, to state that it was in the middle of that St. Croix which had its mouth in the *Bay of Fundy*. Notwithstanding this description, it has been seen, that which was the true St. Croix, became a subject of dispute between the two Governments. Still both parties were prevented from claiming that any river which did not flow into that bay was the St. Croix of the treaty.

The Bay of Fundy has been twice mentioned in the treaty. After starting at the northwest angle of Nova Scotia, and from thence sweeping round the boundaries of the United States to this bay, it was necessary to fix as precisely as possible the point at which our eastern boundary commenced. This was essential for a double purpose. In the first place it was the extreme northern point from which a line was to be run due east twenty leagues into the ocean, according to the treaty ; within which space the United States were entitled to all the islands along their coast, except such as were within the limits of Nova Scotia ; and, in the second place, it was the point from which our eastern line was to commence, and to run to the northwest angle of Nova Scotia.

Had the commissioners omitted to fix this point with as great precision as they could, they would have been guilty of culpable neglect. Having done so, and having mentioned the Bay of Fundy as that part of the ocean in which the St. Croix has its mouth, the British Government have used it, not merely as it was intended, to mark the eastern boundary of the United States, but to render the whole treaty, so far as the northeastern boundary is concerned, absurd, uncertain, and void. Surely the commissioners never could have foreseen any such result. The language of this portion of the treaty is as follows :

“ East by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy to its source, and from its source, directly north to the aforesaid highlands, which divide the rivers that fall into the Atlantic ocean from those which fall into the river St. Lawrence, comprehending all islands within twenty leagues of any part

of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic ocean; excepting such islands as now are or heretofore have been within the limits of the said province of Nova Scotia."

Upon the whole, the Committee do not entertain a doubt of the title of the United States to the whole of the disputed territory. They go further, and state that if the General Government be not both able and willing to protect the territory of each State inviolate, then it will have proved itself incapable of performing one of its first and highest duties. They feel an abiding reliance, however, in the inherent sense of justice of the British Government. As soon as that Government shall become convinced that the disputed territory belongs to the United States, which they persuade themselves will be the case at no distant day, impelled by a desire of preserving inviolate the faith of treaties, it will hasten to relinquish its pretensions. In that event, the Committee entertain not a doubt but that this long contested and dangerous question may be settled to the mutual satisfaction of both Governments.

The Committee will now proceed to make a very few observations on the second question proposed for discussion, which was, Does no other and more friendly expedient remain untried of bringing this long pending controversy to a conclusion, then the passage of the bill which has been referred to them by the Senate? They are most happy to be able to answer this question in the affirmative. Anxious as they are to cultivate, by every honorable means in their power, the most friendly relations with Great Britain, it affords them sincere pleasure, that the existing state of the negotiations between the two countries will justify them in forbearing to recommend the adoption of any measure on the subject by the Senate at its present session. Negotiation has not yet been exhausted. Although the Committee are firmly convinced that the title of the United States to the territory in dispute is clear and unquestionable; although they acknowledge that the State of Maine has just reason to complain not only of the long and vexatious delay which has been experienced in settling this question, but of the assumption of actual jurisdiction by Great Britain over a portion of her territory, under circumstances well calculated, in

some instances at least, to excite her sensibility, yet, from the known justice of that power, they still entertain a confident hope that the pending negotiation may be productive of the most happy results. The important preliminaries of a convention between the two Governments, for the purpose of exploring and surveying the disputed lines of the treaty boundary have already been adjusted. In this state of the question, it seems to them not advisable to withdraw the subject from the Executive, to which it more properly belongs, and direct the boundaries to be surveyed, the lines to be marked, and monuments to be erected thereon, under the authority of Congress. In their opinion, therefore, the bill referred to them, "to provide for surveying the northeastern boundary line of the United States, according to the provisions of the treaty of peace of seventeen hundred and eighty-three," ought not to pass.

Entertaining this view of the whole subject, the Committee unanimously recommend to the Senate the adoption of the following resolutions:

*Resolved*, That after a careful examination, and deliberate consideration of the whole controversy between the United States and Great Britain, relative to the northeastern boundary of the former, the Senate does not entertain a doubt of the entire practicability of running and marking that boundary, in strict conformity with the stipulations of the definitive treaty of peace of seventeen hundred and eighty-three; and it entertains a perfect conviction of the justice and validity of the title of the United States to the full extent of all the territory in dispute between the two powers.

*Resolved, further*, That, considering that more than half a century has elapsed since the conclusion of that treaty; considering the extraordinary delay which has hitherto marked the negotiations and proceedings of the Governments of the two countries in their endeavor amicably to settle the controversy; and considering the danger of mutual irritation and collisions upon the borders of the kindred and friendly nations, from further procrastination, the Senate cannot forbear to express an earnest desire that the pending negotiation should be brought to a close, and the final decision of the dispute made, as early as practicable.

*Resolved*, That as it would be inexpedient for the United States to proceed, upon their separate authority, to survey and mark the north-



eastern boundary, until all reasonable means of effecting that object by the consent and concurrence of both parties shall have been exhausted, the "bill to provide for surveying the northeastern boundary line of the United States, according to the provisions of the treaty of peace of seventeen hundred and eighty-three," ought not to pass, and it is, therefore, ordered that it be laid upon the table.

SENATE.....

.....No. 46.

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A N A C T

CONCERNING THE

POWERS OF TRUSTEES.

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**Commonwealth of Massachusetts.**

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IN SENATE, Feb. 9, 1839.

*Ordered*, That the Committee on the Judiciary inquire into the expediency of authorizing the Justices of the Supreme Judicial Court, to empower Trustees of real estate to sell and convey any real estate held in trust, or to improve the same by repairing or rebuilding the edifices thereon, or by erecting new buildings on the land, and for the purposes aforesaid, to borrow money on mortgage of the trust property, if the parties entitled to the present income of the trust property shall consent thereto: and, *provided*, that it shall appear to the satisfaction of the court, that the proposed sale or improvements will be beneficial to the reversioners or remaindermen as well as to the tenants for life or years, and, that the amount and terms of the loan are reasonable and proper.

Attest,

CHARLES CALHOUN, *Clerk.*

**Commonwealth of Massachusetts.**

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SENATE, March 7, 1839.

The Committee on the Judiciary to whom was referred an order, to inquire into the expediency of authorizing the Supreme Judicial Court to empower Trustees of real estate to improve the same, by repairing or rebuilding the edifices thereon, and for these purposes to raise money by sale of part of the property, or by mortgage thereof, have considered the same, and report the accompanying bill.

SAMUEL B. WALCOTT,

*For the Committee.*

## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Thirty-Nine.

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### AN ACT

Concerning the Powers of Trustees.

**BE** it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :

1    SEC. 1. The Justices of the Supreme Judicial  
2 Court are authorized to license and empower a trustee of real estate to repair the buildings thereon, or  
3 to remove them and erect new buildings, or to construct buildings on land theretofore vacant, and otherwise to improve the trust property, and for the purposes aforesaid to dispose of and apply the proceeds  
4 of any personal estate held by such trustee, or to borrow money on mortgage of the real estate to be improved, or of any real estate held by the said trustee,  
5 for the same uses and trusts, and to execute all such

12 deeds as he shall be authorized by the court to do:  
13 *provided*, that no such authority shall be given to a  
14 trustee unless it shall appear to the satisfaction of the  
15 court, that the proposed improvement will be benefi-  
16 cial, as well to the persons entitled to the immediate  
17 income of the trust property as to those who may there-  
18 after be entitled to the property or the income there-  
19 of, by way of reversion, remainder, or otherwise, nor  
20 unless the persons entitled to the immediate income  
21 of the property, or the major part in interest of them,  
22 shall consent to the granting of such license.

1     SEC. 2. The court shall proceed in cases arising  
2 under this statute according to the course of proceed-  
3 ing in equity, and before granting the authority, shall  
4 ascertain if any married woman, minor, or other per-  
5 son under disability, is interested in the question, and  
6 shall cause the rights and interest of all such persons  
7 to be duly represented and protected, and all persons  
8 interested, to be duly notified in such manner as the  
9 court may direct, and shall prescribe such terms and  
10 conditions to the granting of such license, as in the  
11 opinion of the court may be required.



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SENATE.....

.....No. 47.

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REPORT AND BILL

CONCERNING

STATE PAUPERS.

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**Commonwealth of Massachusetts.**

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IN SENATE, Feb. 1, 1839.

*Ordered*, That Messrs. LEE and BROWN, with such as the House may join, be a Committee to consider the expediency of altering or abolishing the existing laws for the support of State Paupers.

Sent down for concurrence.

CHARLES CALHOUN, *Clerk*.

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HOUSE OF REPRESENTATIVES, Feb. 4, 1839.

Concurred: and the following members are joined, namely:

Messrs. BRIMMER, of <i>Boston</i> ,	PHILLIPS, of <i>Peru</i> ,
JOHNSON, of <i>Haverhill</i> ,	METCALF, of <i>Medway</i> ,
CREHORE, of <i>Newton</i> ,	CHURCH, of <i>Westport</i> ,
FLAGG, of <i>Holden</i> ,	BARSTOW, of <i>Rochester</i> ,
PHELPS, of <i>Chesterfield</i> ,	CROWELL, of <i>Dennis</i> ,
PARKS, of <i>Montgomery</i> ,	BRADLEY, of <i>Tisbury</i> ,
RUSSELL, of <i>Deerfield</i> ,	BRIGGS, of <i>Nantucket</i> ,

L. S. CUSHING, *Clerk*.

SENATE, Feb. 4, 1839.

The following Senators are added to the above Committee : MESSRS. GURNEY, FRENCH, SPOFFORD, ASHMUN, and WHITMAN.

Attest,

CHARLES CALHOUN, *Clerk.*

**Commonwealth of Massachusetts.**

---

IN SENATE, March 8, 1839.

The Committee of both Houses appointed to consider the expediency of altering or abolishing the existing law for the support of State Paupers, make the following report, accompanied with a bill.

A. LEE, *Chairman.*

## **Commonwealth of Massachusetts.**

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The Committee of both Houses appointed to consider the expediency of altering or abolishing the existing laws for the support of State Paupers, have attentively considered the subject submitted to them, and respectfully ask leave to submit the following

### **R E P O R T:**

The subject referred to your Committee, has so often been presented to the Legislature without success, that they should almost despair of being able to recommend any effectual plan for relief, but for certain peculiarly favorable circumstances.

The present state of our finances imperiously demand the curtailment of every unnecessary expenditure, and the public mind is more than ever impressed with the evils of our pauper system. We are, moreover, encouraged by the fact, that England, from whence our ancestors brought the germ of our poor laws, has lately, by an energetic effort, freed herself from what threatened to become a fatal burden.

The good effects produced in that country, simply, by abolishing all out-of-door relief to the poor are such as, almost, to exceed belief.



It is true, that the great evil with us, arises from a somewhat different cause. Most nations suffer more or less from the necessity of providing for the support of the indigent. But in one respect Massachusetts presents a case altogether singular.

Ours is the only community on the globe, it is believed, where the public treasury is thrown open to the indigent from other countries, where the alms-houses are filled with emigrants from foreign lands, who find a home in every parish, and demand as a right, what is often denied to the native poor of the State itself.

This class of paupers is most truly and forcibly described in the report made in 1833, by the commissioners appointed by the House of Representatives, to investigate the subject. "Nor is there," they say, "a more abject class of our fellow beings to be found in this country, than is this class of our poor. Alms-houses, (where they are to be found,) are their inns where they stop for refreshment. Here they rest, when too much worn with fatigue to travel, and for medical aid when sick. And as they choose not to labor, they leave these stopping places when they have regained strength to enable them to travel, and pass from town to town, demanding their portion of the State's allowance for them as their right. And from place to place they receive a portion of this allowance, as the easiest mode of getting rid of them, and they talk of the allowance as '*their rations*,' and when lodged for a time, from the necessity of the case, with the town's poor, it is their boast, that they, by the State's allowance for *them*, support the town's inmates of the house."

Since this valuable report was made, things have certainly not changed for the better. Incredible as it may ap-

pear, to those who have not attended to the subject, the charge on the State treasury the past year, for this species of paupers, is over \$46,000. That some way must be devised of checking this expenditure, no one can doubt. For an account of the origin and progress of this evil, the Committee must refer to the excellent report just quoted.

Their duty is, to recommend a remedy, and with this view, they will now proceed to point out the main defects of the system.

These seem to your Committee to be, first, that our mode of relief is a direct encouragement to idleness, inasmuch as it leads the poor, especially the ignorant and vicious class of foreigners, to look, for their principal support, to the overseer of the poor, instead of depending on their own industry. There is no maxim more universally admitted, than that a healthy state of mind and body depends on active and useful exertion. It is one of the laws of our nature. To keep alive in the minds of the people this important truth, should be the aim of all governments. Unhappily, our pauper system has had the directly opposite tendency, and we have the mortification to reflect, that the *immense* sum that is annually paid from our treasury for the support of what are called state poor, is more than thrown away.

It operates as a bounty upon idleness, an encouragement to intemperance, and is the means of debasing, demoralizing and enfeebling a very large portion of the community. It fills our towns with a class of travelling poor, who come to us for that support which their own country denies them.

There is reason to believe, that one of the causes of the systematic exportation of paupers from Great Britain

to our shores, is, the well-known prodigality with which they are provided for among us.

2d. The second great evil in the system consists in the manner of granting the relief. The expenditure is made by the officers of the towns, and reimbursed out of the treasury of the State. While this is the case, it is in vain to expect economy or method in the management of the poor. Without imputing improper motives in any quarter, it is clear, that, wherever money is advanced at the discretion of *one* body, to be repaid by *another*, abuse must exist. The principle is vicious in itself, and must lead to mischief. The best proof that it is so, is found in the fact, that many of the towns manage their poor with great economy—some have even made a profit on them; but owing to the false principle on which our state poor law is based, this only serves to drain the treasury the more effectually. It will be seen at once, that the cheaper a town can keep its poor, the more it gains by boarding the foreign poor for the State. If a town has succeeded in making their poor pay for themselves, the whole allowance, which is 49 cents a week for adults and 28 cents for children, is a clear profit.

The practice of granting out-of-door relief is liable, if possible, to still greater objections, inasmuch as it is less public and more agreeable to the pauper, who escapes the inconvenience and disgrace of going into the poor-house, and is enabled to practise deception on the overseers.

Your Committee are of opinion, that the first step towards an effectual reform of these abuses should be, to make it the interest of the towns to exercise all possible vigilance in guarding against imposition, and especially to provide means of employment for such as are admitted into their poor-houses.

With this view, the Committee submit the annexed bill, which provides, first, that no allowance be made to any town, for relief granted to paupers out of the almshouse, after the first day of May next.

This provision is calculated to cut off, at once, a large item of expense, and requires no explanation.

Secondly. The bill provides, that no allowance shall be made for the support of any paupers *who shall be admitted* into the poor-houses after the said first day of May next. By this provision the insane, idiotic, and infirm poor, who are already in the houses at the charge of the State, will be allowed to remain so, until the first day of May, 1844, after which no allowance will be made from the treasury for the support of any pauper whatever. This, however, is comparatively a small class. The great mass of state poor are those who, from intemperance, idle habits, or accidental distress, resort to the poor-houses in the winter, and, as soon as the spring opens, take their departure, to pass the summer in their old habits, relying on the poor-house for shelter when the winter comes round.

Persons of this description who leave the houses after the first of May, if suffered to return, will be at the charge of the town. In order to enable the town to deter the able-bodied from entering the houses, and to remunerate themselves for the support of such as are unable to take care of themselves, from the effects of drinking or other vices, the bill gives the overseers of the poor authority to keep them in the houses, until by their labor they shall have remunerated the town for their support.

These are the main objects of the bill, to which it will, probably, be objected, that its operation will be very unequal, some towns having a very much larger share of

foreign poor than others, owing to circumstances over which they have no control.

Your Committee think, however, that the effect of the law will be at once to drive away a large portion of the applicants, as they are induced to believe so from what has taken place in England.\* After the passing of the act of 1834, requiring all who received parish aid to go into the poor-houses, there were but few to be found who were willing to receive it. Some parishes, from having half their inhabitants paupers, had none. One district is mentioned in the county of Kent, with a population of 41,409, when the total number of able-bodied paupers under the old system was 954. After the law had been a few months in operation, there were but 5. A still more pertinent example may be found in the state of Maine. One of the first acts of the Legislature of that state after the separation from Massachusetts, was to abolish all allowance for the support of the poor, from the state treasury.

From information given the Committee by very intelligent gentlemen, who have resided in both states, they are satisfied, that it was a most wise and salutary measure. By giving the towns the power to enforce labor from those who are able-bodied, the principle, that every man is bound to contribute to his own support, is carried into practice. If an individual is willing and able to support himself at large, it is well; if he preferred lodging in the poor-house, he must work for the public which supports him, according to his ability. The towns will also be stimulated to procure farms, to find employments of various kinds, and to increased frugality in the mode of support in order to lighten the expense as much as possi-

\* *Edinburgh Review*, April, July, 1836.

ble. From these causes, the Committee have no doubt the charge on the public for this class of paupers, will be reduced to a very insignificant amount.

With regard to the comparatively small number, who, from mental imbecility, old age, or infirmity, are objects of charity, it seems no more than just, that the towns where they live should support them. It was in those towns they have been employed in health, and have contributed their proportion towards the expense and prosperity of the place.

Another consideration should not be lost sight of, in this view of the question. Those towns which have the largest number of state paupers are generally the largest and most wealthy towns in the Commonwealth. They must contribute according to their means to this charge, whether it be paid by the towns or the state treasury. If the inhabitants of those towns will make a calculation of their fair proportion of the burden, according to their valuation, they will find the difference in the two modes of payment much less than they suppose. It is for them to choose between an economical and strict method of support, or the present wasteful and improvident one.

Heretofore, the principal opposition to any plan for throwing the state poor upon the towns, has come from the city of Boston. This place is unquestionably liable to a greater number of applications for relief than any other part of the Commonwealth, but there are also good reasons why the city of Boston should make no objection to the proposed measure.

The reasons just given apply with peculiar force to this city. Her proportion of the burden, under the present plan, is very great, and, from the facilities of finding employment and the ease with which the foreign poor may

be sent home, the city has greatly the advantage of most other places in getting rid of them. In addition to this it should be remembered, that, two years ago, an act was passed, levying a duty of two dollars a head on all alien passengers landed in the Commonwealth, by any vessel arriving from foreign ports; and the act provides, that the money so collected shall be paid into the treasury of the city or town where such vessel shall arrive, "to be appropriated as the city or town may direct for the support of foreign paupers." Under this act the city of Boston received the sum of \$5780 for the year ending June 1, 1838. The whole amount received by the city for state paupers of all descriptions, for the year ending December 31, 1838, was \$12,643 07. With the increased economy and vigilance which would result from the operation of the proposed change, added to the great decrease in the number of applicants, your Committee are fully satisfied, that the sum received from alien passengers would cover the whole expense of the city of Boston for state paupers.

It will be observed, that the town poor are not taken into the account, except in extending to them the principle of restraint for remuneration of expenses.

On the whole, then, your Committee are of opinion, that the character, well-being and happiness of the Commonwealth require that some change should be made in the laws for the support of state paupers, and that the bill now submitted by them will conduce, more than any other measure, to a satisfactory and final settlement of this most important subject.

ARTEMAS LEE, *Chairman.*

*March 7, 1839.*



**Commonwealth of Massachusetts.**

In the Year One Thousand Eight Hundred and Thirty-Nine.

**AN ACT****Concerning Paupers.**

**BE** it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :

1 SEC. 1. From and after the first day of May  
2 next, no person shall be considered a state pauper, or  
3 entitled to support as such, except as hereinafter pro-  
4 vided.

1 SEC. 2. All persons under ten years, and over  
2 sixty years of age, and all idiots and lunatics, who, at  
3 the time of passing this act, are supported as state  
4 paupers, may hereafter continue to be supported as  
5 such, in the several cities and towns in which they  
6 are supported at the time of the passage of this act,

7 until the first day of May, one thousand eight hun-  
8 dred and forty-four, and no longer: *provided*, that  
9 every pauper, on arriving at ten years of age, shall  
10 cease to be considered a state pauper, idiots and luna-  
11 tics excepted.

1 SEC. 3. No town shall have claim upon the Com-  
2 monwealth for the support of any pauper who is not,  
3 at the passing of this act, an inmate of some alms-  
4 house, asylum, boarding-house, house of industry, or  
5 house of correction.

1 SEC. 4. Overseers of the poor in the several cities  
2 and towns, and the directors of the house of industry  
3 in the city of Boston, shall have authority to require  
4 reasonable labor from all paupers, whether town or  
5 state, and may detain, for a time not exceeding six  
6 months, any pauper, until such pauper shall have  
7 made compensation by labor for the expenses incurred  
8 by such town or city on his or her account; and the  
9 overseers of the poor and directors as aforesaid, shall  
10 provide suitable materials, sufficient at all times, to  
11 keep in employment all the paupers who are able to  
12 labor in their respective work-houses, in addition to  
13 such out-door work as may be deemed expedient.  
14 They shall have authority to compel the labor, by the  
15 infliction of such penalties and punishments, as may  
16 be prescribed, not inconsistent with the laws of the  
17 State, and the principles of humanity.

# THE HISTORY OF THE

REIGN OF THE EMPEROR

OF THE GREAT MONGOLS

BY

JOHN

DAVIDSON

OF THE UNIVERSITY OF

EDINBURGH

AND

OF THE

ROYAL SOCIETY OF



## SENATE....No. 48.

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### Commonwealth of Massachusetts.

SENATE, March 9, 1839.

The Committee on the Judiciary to whom were referred the Petition of Jonathan Tobey, and the Petitions of divers others in aid of said Petition, have considered the subject, and report the accompanying Resolve.

For the Committee,

GEO. MOREY.



**Commonwealth of Massachusetts.**

---

In the Year One Thousand Eight Hundred and Thirty-  
Nine.

---

**R E S O L V E**

On the Petition of Jonathan Tobey.

*Resolved*, For the reasons set forth in said petition, that the County Commissioners of the County of Bristol, be authorized to examine the claims which said Jonathan Tobey alleges he has against said County, and for which he has no legal or equitable remedy ; and to make him such allowances therefor, as to them may seem expedient, just, and right. And said Commissioners are further authorized, if they see fit, to refer the claims of said Tobey to the determination of Arbitrators, mutually selected by themselves and the said Tobey,—the decision of said Commissioners, or of said Arbitrators, in the premises, to be final.





SENATE.....

.....No. 49.

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REPORT AND BILL

CONCERNING THE

SEEKONK BRANCH RAIL-ROAD CO.

AND THE

*Boston and Providence Rail-road Corp.*

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## Commonwealth of Massachusetts.

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SENATE, March 11, 1839.

The Joint Special Committee, to whom was referred the petition of the Seekonk Branch Rail-road Company, praying the Legislature to prescribe the tolls to be paid by said company, for the use of the Boston and Providence Rail-road, submit the following

## R E P O R T.

The Boston and Providence Rail-road Corporation was chartered on the 22d of June, A. D. 1831. By the 12th section of their charter, it is provided,—

“That no other rail-road than the one hereby granted, shall, within thirty years from and after the passing of this act, be authorized to be made, leading from Boston to any place within five miles of the southern termination of the rail-road hereby authorized to be made: *provided*, the State may authorize any company to enter with another rail-road at any point of said Boston and Providence rail-road, paying for the right to use the same, or any part thereof, such a rate of toll as the Legislature may, from time to time, prescribe, and complying with such rules and regulations as may be established by said Bos-

#### **4      SEEKONK BRANCH R. ROAD.      [March,**

**ton and Providence Rail-road Corporation, by virtue of the fifth section of this act."**

**The provision in the fifth section referred to, is as follows:—**

**"The transportation of persons and property, the construction of wheels, the form of cars and carriages, the weight of loads, and all other matters and things in relation to the use of said road, shall be in conformity to such rules, regulations and provisions as the directors shall, from time to time, prescribe and direct; and said road may be used by any person who may comply with such rules and regulations."**

**The Seekonk Branch Rail-road Company was chartered April 16, 1836. In the fifth section of the act of incorporation, is the following provision:—**

**"The said corporation are hereby authorized to enter with their said branch rail-road on that part of the Boston and Providence rail-road designated in the first section of this act, and use the same or any part thereof, paying therefor such a rate of toll as the Legislature may, from time to time, prescribe; complying with such rules and regulations as may be established by the Boston and Providence Rail-road Corporation, by virtue of the fifth section of their act of incorporation."**

**On the 16th of August, 1837, the directors of the Boston and Providence Rail-road Corporation adopted the following "rule and regulation":—**

**"This corporation will provide locomotive engines, with skilful engineers, and all proper apparatus for the moving of cars and carriages, loaded with passengers and goods, over the road, at all reasonable times, and at such rates as may, from time to time, be established; and will furnish suitable accommodations for all such cars and car-**

riages at the depots of the corporation, not inconsistent with the necessary accommodation of their own cars and carriages. And no other locomotive engines shall be used on the road than those belonging to the corporation."

This regulation, the Boston and Providence Rail-road Corporation contend is authorized by that part of the fifth section of their charter above quoted; and is, moreover, a salutary and necessary regulation, demanded by a proper regard for the public safety.

The Seekonk Branch Rail-road Company, on the other hand, deny both of these positions, and insist that the language and spirit of the fifth section of the Seekonk Branch charter authorizes them to use the Boston and Providence rail-road in any manner, and by any power, in and by which it is commonly used by the Boston and Providence Rail-road Corporation itself, and that such use is not inconsistent with the safety of the travelling public.

The question of right, under the two charters, the Committee consider as by no means free from doubt; but they also consider it as a question for the decision of which the Legislature may, with propriety, refer the parties to the judicial tribunals.

Upon the question whether it is consistent with public safety that the two corporations should run their separate locomotive engines upon the Boston and Providence road, the majority of the Committee are compelled to give their opinion in the negative. They believe that the use of the same rail-road, with a single track, by two companies, each with its own locomotive power, is incompatible with the safety of travellers upon the road. Upon this subject the Committee had before them the same written evidence which was presented to the committee of the Le-

gislatre upon this subject at its last session, and they consider it as unanswered and unanswerable. It consists in depositions of a large number of the most distinguished scientific and practical gentlemen connected with the construction and operation of rail-roads in this country. It is not deemed necessary to re-state their voluminous evidence here. Should the Legislature think proper so to order, it can be printed for their use.

The Committee next proceed to the question of prescribing tolls for the use of the Boston and Providence road by the Seekonk Branch, without locomotive power.

To fix the rates of toll on this road in a manner which shall do justice to both of the parties, is an exceedingly difficult matter, involving, as it must, considerations arising out of the provisions of their charters, requiring a patient and minute investigation of a great variety of facts, and many and careful mathematical calculations. The Committee heard much testimony upon this subject, and elaborate and able arguments, and they are satisfied, that, without much more time and attention than they are able to give to it, any result they may arrive at will be liable to great inaccuracy and imperfection. The question, moreover, peculiarly demands the science and practical knowledge of men whose studies and pursuits have made them conversant with subjects of a kindred character. To neither of these can your Committee lay any claim. They have therefore determined to recommend to the Legislature the appointment of commissioners to prescribe the rates of toll, according to the provisions of the accompanying bill.

It will be perceived, that the Committee have provided, by the first section of the bill, that the Boston and Providence corporation shall supply locomotive power, and



transport over their road the cars of the Seekonk Branch company, and furnish reasonable accommodations at their depots for the cars, passengers and merchandise of said company. This provision is in accordance with the rules and regulations of the Boston and Providence Rail-road Corporation, already adopted.

The seventh section provides, that the act shall not be so construed as to take away any rights which the Branch company may have by their charter to the unrestricted use of the Boston and Providence rail-road, nor to give to the latter corporation any additional right to exclude the former from such use, the Committee intending to leave this question unaffected by the bill. A section is also added, allowing the Branch road to dispose of their road, or any interest therein, to the Boston and Providence Rail-road Corporation.

All which is respectfully submitted.

By order of the Committee,

THOS. KINNICUTT, *Chairman.*

**Commonwealth of Massachusetts.**

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Reported by a Special Joint Committee consisting of  
Messrs. KINNICUTT and BREED; of the Senate : and  
Messrs. REED, of *Rowe*,  
KINSMAN, of *Newburyport*, and  
WEBSTER, of *Stockbridge*,  
of the House.

## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Thirty-Nine.

---

### AN ACT

Concerning the Seekonk Branch Rail-road Company,  
and the Boston and Providence Rail-road Corporation.

*BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :*

1    SEC. 1. The Boston and Providence Rail-road  
2 Corporation shall, at such times, and for such rates of  
3 toll, as shall be fixed in the manner hereinafter pro-  
4 vided, receive upon their rail-road, at the junction  
5 thereof with the Seekonk Branch Rail-road in See-  
6 konk, and at the depot of said Boston and Providence  
7 Rail-road in Boston, and connect with their passenger  
8 trains, the passenger and baggage cars of the said  
9 Seekonk Branch Rail-road Company, and in like

10        **SEEKONK BRANCH R. ROAD.**  {[March,

10 manner shall receive the freight cars of said company  
11 and connect them with the freight trains of said cor-  
12 poration, and transport the same over said Boston  
13 and Providence Rail-road, or any part thereof, in the  
14 same manner as the passenger and freight cars of said  
15 corporation are transported over said road ; and shall  
16 also furnish at their depot in Boston, to the said See-  
17 konk Branch Rail-road Company, all necessary and  
18 reasonable accommodations for their passengers and  
19 merchandise, and for their passenger, baggage and  
20 freight cars, not inconsistent with the accommodation  
21 of their own passengers, merchandise, and cars ; and  
22 shall furnish all proper facilities for loading and un-  
23 loading merchandise at their regular stations.

1        **SEC. 2.** The Seekonk Branch Rail-road Compa-  
2 ny shall, at all times, furnish for their cars so trans-  
3 ported over the Boston and Providence Rail-road,  
4 conductors, brakes and brake-men, according to the  
5 rules and regulations of the Boston and Providence  
6 Rail-road Corporation, and the same shall, while on  
7 the road, and at the depot of said Boston and Provi-  
8 dence Rail-road Corporation, be under the direction  
9 of the superintendent thereof.

1        **SEC. 3.** Upon the petition of said Seekonk  
2 Branch Rail-road Company, the governor with the  
3 advice and consent of council, shall appoint three  
4 commissioners, who shall appoint a suitable time and  
5 place of hearing, and shall give notice of such ap-  
6 pointment to the parties in writing, fourteen days at  
7 least before the time appointed, and after hearing the  
8 parties shall, by a major vote, determine, upon just and  
9 equitable principles, according to the provisions of the

10 charters of the said corporations, and the several acts  
11 in addition thereto, the rates of toll to be paid by the  
12 Seekonk Branch Rail-road Company to the said Bos-  
13 ton and Providence Rail-road Corporation, for trans-  
14 porting the cars of said company over their road, and  
15 for the accommodations furnished in the manner afore-  
16 said, and at what times said cars shall be so transported:  
17 *provided*, that no times shall be fixed for that purpose  
18 other than those at which said Boston and Providence  
19 Rail-road Corporation transport their own passen-  
20 gers and freight over said road; and such determina-  
21 tion, when made, shall be delivered in writing to the  
22 parties, and shall be binding upon them until the  
23 terms thereof shall be varied by agreement of the  
24 parties, or by a revision thereof in the manner herein-  
25 after provided.

1 SEC. 4. Upon the petition of either of said corpo-  
2 rations for that purpose, the governor, with the advice  
3 and consent of council, shall again appoint three com-  
4 missioners to revise any previous determination, and  
5 for this purpose any former commissioner may be  
6 re-appointed; and said commissioners may, in the  
7 same manner, and under the same proceedings as are  
8 set forth in the preceding section, modify or vary the  
9 terms of any previous determination; and any deter-  
10 mination upon such revision, when made in writing  
11 and delivered to the parties, shall be binding upon  
12 them until altered by agreement of the parties, or by  
13 a subsequent decision of commissioners: *provided*,  
14 *however*, that no revision of any previous determina-  
15 tion shall be had within one year from the time of  
16 making thereof.

12      **SEEKONK BRANCH R. ROAD.**      [March,

1      **SEC. 5.** The Seekonk Branch Rail-road Company  
2 shall render to the Boston and Providence Rail-road  
3 Corporation, weekly, a full and particular account of  
4 the passengers transported as aforesaid over their road,  
5 or any part thereof, and of the quantity and descrip-  
6 tion of merchandise so transported, and shall pay  
7 weekly, to said treasurer, the amount of tolls due for  
8 the same; and if said Seekonk Branch Rail-road  
9 Company shall delay, for more than one week, to  
10 render such an account, or to pay such tolls, the Bos-  
11 ton and Providence Rail-road Corporation may refuse  
12 to transport their cars, until said account is rendered  
13 and said tolls are paid.

1      **SEC. 6.** Whenever any determination shall have  
2 been made by said commissioners, in manner afore-  
3 said, the corporations aforesaid shall append a copy  
4 thereof to their next annual report to the Legislature,  
5 and shall, in the annual reports of their receipts and  
6 expenditures, specify their receipts and expenditures  
7 under such determination.

1      **SEC. 7.** Said commissioners, for their services  
2 under this act, shall be paid by the two corporations  
3 aforesaid, in equal proportions, a compensation at the  
4 rate of ——— dollars for every day occupied in the  
5 duties of their office, and ——— cents a mile for  
6 travel.

1      **SEC. 8.** Nothing contained in this act shall be so  
2 construed as to take away any right which the See-  
3 konk Branch Rail-road Company may have by its  
4 charter, or the acts in addition thereto, to use in any  
5 other manner than is herein provided for the Boston  
6 and Providence Rail-road; nor to give to said Boston

7 and Providence Rail-road Corporation, any right  
8 which it may not have by its charter and the acts in  
9 addition thereto, to exclude said Seekonk Branch  
10 Rail-road from such use.

1     SEC. 9. The eighth section of the charter of the  
2 Seekonk Branch Rail-road Company, is hereby so far  
3 modified, that the prohibition therein contained shall  
4 not extend to the Boston and Providence Rail-road  
5 Corporation, or to any stockholder therein.





# THE HISTORY OF THE

## REPUBLIC OF THE UNITED STATES OF AMERICA

BY  
JAMES M. SMITH  
OF THE  
UNITED STATES ARMY  
AND  
OF THE  
UNITED STATES SENATE

NEW YORK: PUBLISHED BY  
J. B. LIPPINCOTT & CO., 15 N. 2ND ST.



SENATE....No. 50.

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**Commonwealth of Massachusetts.**

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IN SENATE, Jan. 17, 1839.

*Ordered*, That the Committee on Probate and Chancery be instructed to inquire, what further provision is necessary for the protection of the rights of Devises of Real Estate, when the same is taken by Commissioners from the Probate Court, for the endowment of the Widows of Testators.

Attest,

CHARLES CALHOUN, *Clerk*.

**Commonwealth of Massachusetts.**

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SENATE, March 11, 1839.

The Committee on Probate and Chancery to whom was referred an order relative to Contribution among Devisees, have considered the same, and report the accompanying bill.

GEO. ASHMUN, *per order.*

## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Thirty-Nine.

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### AN ACT

In relation to Contribution among Devisees.

**BE** *it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :*

1    SEC. 1. Whenever the estate of one or more  
2 devisees under a will, shall be taken and assigned by  
3 the judge of probate for the dower of the widow of  
4 the testators, all the other devisees and legatees shall  
5 contribute their respective proportions of the loss, to  
6 the person from whom the estate is so taken, so as to  
7 make the loss fall equally upon all the devisees and  
8 legatees in proportion to the value of property receiv-  
9 ed by them under the will : *provided*, that no devi-  
10 see or legatee shall be held to contribute as aforesaid,  
11 who may be exempted therefrom by the provisions of  
12 the will.

1    SEC. 2. All cases arising under this act may be  
2 decided in an action at law when the case is such as  
3 to allow of that course of proceeding,—or they may  
4 be originally brought and determined in the Supreme  
5 Judicial Court as a Court of Chancery.



SENATE.....

.....No. 51.

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**COMMUNICATION**

**FROM THE**

**SECRETARY OF THE BOARD OF EDUCATION.**

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**Commonwealth of Massachusetts.**

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IN SENATE, March 5, A. D. 1839.

*Ordered*, That the Secretary of the Board of Education be requested to furnish the Senate with the amount of expense incurred by said Board, or by said Secretary, for printing, from the organization of said Board to the present time, with the name of the document, the number printed, the amount which each number and kind have cost, designating particularly the object of such document. Also the expense of distribution, stating the amount paid to the Sheriffs of the several counties, and to others who may have received a compensation from the State for the distributing said documents.

Also all other expenditures of said Board of Education, or said Secretary, in the performance of the duties assigned them, and the compensation they each receive.

Attest,

CHARLES CALHOUN, *Clerk*.

TO THE HON. MYRON LAWRENCE,

*President of the Senate.*

SIR,—

An order, adopted by the Senate on the 5th inst., having requested the Secretary of the Board of Education “to furnish the Senate with the amount of expense incurred by said board, or by said Secretary, for printing, from the organization of said board to the present time, with the name of the document, the number printed, the amount which each number and kind have cost, designating particularly the object of such document. Also the expense of distribution, stating the amount paid to the sheriffs of the several counties, and to others who may have received a compensation from the State for the distributing said documents ;

“Also all other expenditures of said Board of Education, or said Secretary, in the performance of the duties assigned them, and the compensation they each receive ;”—

I hereby, in compliance with said request, respectfully submit the following statement.

The Board of Education was organized on the 29th day of June, 1837.

The only expenses “incurred by the board, or by its Secretary, for printing, from the organization of the board to the present time,” is as follows :

For printing 700 circulars,	-	-	\$16 00
“ “ 460 blank tables,	-	-	5 50
Amounting in the whole to			\$21 50

In "designating particularly the object" of the first item above named, I would further state, that the Board, on the day of their organization, issued an "Address to the people of Massachusetts," containing the following clauses:—"It is obvious, however, that, with the limited powers possessed by the Board, the success of its efforts must depend mainly on the general and cordial co-operation of the people; and it is the object of this address to call upon the friends of education, throughout the Commonwealth, to come to the aid of the Board in the discharge of this duty. It has been judged by the undersigned, that this co-operation can in no way more effectually be given, than by a convention, to be held in each county of the Commonwealth, at some convenient time in the course of the summer and autumn." "It is proposed, that the time of holding these meetings should be arranged by the Secretary hereafter, in such manner as best to promote the public convenience, with a view to general attendance, and so as to allow the Secretary to be present at each county convention." "Seasonable notice of the time of holding each county convention will be duly given."

The circular, above mentioned, was addressed to the school committees of the several towns, and one of its objects was, to give notice of the time and place of holding the county conventions. It having been made the duty of the Secretary of the Board to "collect information of the actual condition and efficiency of the common schools and other means of popular education," the circular contained several questions pertaining to that subject; and it was from the answers to these questions that many of the facts were obtained which were embodied in the report of the Secretary to the Board, dated January 1,

1838. To obtain those facts was another object of the circulars.

The object of the blank tables,—charged at five dollars and fifty cents,—was to facilitate the preparation of the “Annual Abstract of the school returns” for 1837. That preparation was a work of great labor, occupying myself and a clerk not less than four weeks. The printing of the tables saved the writing of a hundred letter-paper pages.

In regard to both the above items, it is proper to add, that, as there was no specific enactment of the Legislature that such printing should be done, I informed the printers for the State, when I applied to them, that if their bills were not allowed by the committee on accounts, I would pay them myself. Never having been called upon by them, I presume said bills were allowed by the committee.

The above two items, amounting to \$21.50, are the only expenses, so far as I know, “incurred by the Board or by its Secretary for printing.”

The standing laws of the State have required the printing of other documents, in relation to our common schools. Formerly this was all done under the supervision of the Secretary of State. Since the establishment of the Board of Education, a portion of it has been directed, by law, to be done under theirs. As the order of the Senate may possibly be construed so as to embrace these items, I will particularize them, according to the best of my knowledge.

For many years past, an “Abstract of the school returns” has been annually prepared under the direction of the Secretary of State. The act appointing the Board provided, that thereafter, they, instead of the Secretary

of State, should "prepare and lay before the Legislature, in a printed form, on or before the second Wednesday in January, annually, an abstract of the school returns." In compliance with this provision of law, the number of seventeen hundred and fifty copies of the abstract,—the same number which had been printed in former years,—was prepared by the Secretary of the Board, under its direction, and distributed among the members as in former years. The cost of these was \$804 75. The "object" is presumed to have been to furnish the members of the Legislature with statistical facts in relation to the system of public instruction, in order that they might be supplied with a basis for intelligent legislation respecting the schools.

By the law of 1838, ch. 105, § 6, the Board were directed to prescribe a blank form of a register to be kept in all the town and district schools in the Commonwealth, and the Secretary of State was directed to forward a sufficient number of copies of the same to the school committees of the respective towns. In obedience to this law, the Board prepared a form and the Secretary of State caused twenty thousand copies of the same to be printed and forwarded. The cost of printing was \$430.56. In former years, the returns of the school committees had been, in many important particulars, conjectural and, of course, inaccurate. The "object" of the register was to supply the several school committees with an accurate knowledge of facts, in order that their returns for the "Annual Abstracts" might be a guide and not a delusion.

By the law of 1838, ch. 159, § 1, it was made the duty of the Secretary of the Board of Education annually to visit each county in the State, for the purpose of at-

tending county meetings of the friends of education, and he was required to give "sufficient notice" of these county meetings. For the purpose of giving this notice and of collecting information, as before stated, one thousand circulars were printed, in the month of July last, and sent to the school committees of the several towns. The cost of printing was \$24.75.

The above are all the expenses for printing, so far as I know, with which the Board of Education or its Secretary have had any connexion.

The next clause in the order relates to the "amount paid to the sheriffs of the several counties, and to others who may have received a compensation from the State for the distributing said documents."

A part of the circulars of 1837 were sent through the hands of the sheriffs. A part of them I sent by mail, paying the postage thereon. The registers and circulars of 1838, were sent by the sheriffs. Most of the above, however, were sent with other packages, which it was the duty of the Secretary of State to transmit to the towns. I have been informed that the sheriffs were allowed forty cents for the delivery of each separate package in the year 1837, and fifty cents in the year 1838. How, or in what proportions, this charge should be divided among the packages sent, I am unable to say.

So far as I know, this is the only expense "for the distributing," with which the Board has been in any way connected.

There is one fact, however, in regard to the expense of distribution, which in order to prevent any misapprehension, it may be proper for me to state. At the last anniversary of the American Institute of Instruction, August, 1838, a lecture was delivered by David P. Page, Esq., of Newburyport, "On the Mutual duties of Pa-



rents and Teachers," which contained so many excellent suggestions, was so eminently practical, and seemed to me so well fitted to do good to all who would read it, that, at my own expense, I caused an edition of three thousand copies to be printed for the purpose of presenting one to the teacher of each public school in the State. These, I requested the Secretary of State to forward, with other documents, which he was then sending into the several towns. This he kindly consented to do. Probably no additional charge will ever be made, on this account, but as it is possible there may be, I thought it my duty to note the fact.

To that part of the "order" which relates to compensation, received by "others" besides sheriffs for distributing documents, I reply, that nothing, to my knowledge, has ever been so received by any one.

The last clause in the "order" relates to "all other expenditures of said Board of Education or said Secretary in the performance of the duties assigned them, and the compensation they each receive."

As an account of "all expenditures of said Board of Education or said Secretary in the performance of the duties assigned them" is here requested, and as this is connected with an inquiry as to the "compensation they each receive," I infer that it is the object of the Senate to learn the general expenses of the Board and of its Secretary "in the performance of their duties," in order that the same may be compared with their "compensation" or reimbursement. It is obvious, that parts of these expenditures cannot be exactly ascertained. Taking the records of the Board for data, I proceed to state them as nearly as practicable.

1st. As to the "expenditures" of the Board. The

Board, or the executive committee of the Board, have held twelve meetings in the city of Boston, since its organization. For the purpose of attending these meetings, and in visiting different towns in the State in order to determine their relative eligibility as sites for Normal Schools, not less than from one hundred and thirty to one hundred and fifty days of time have been wholly occupied, and the necessary travel has amounted to about four thousand miles. For this amount of their time, nothing, of course, has been charged, as the members of the Board receive no compensation for their personal services. The whole amount received on paid, and due on unpaid warrants for the above travel, for board, postage, or any incidental charges, bringing the accounts down to the present time, is \$358 36. Probably two-thirds of this time and travel were rendered necessary by the new duties, imposed upon the Board at the last session in relation to the establishment of Normal Schools. The above, however, does not probably include half the time and services of the Board in the discharge of their duties, for which there must have been "expenditures," but all such services and expenditures have been gratuitous. As one, among many items of additional labor, it may be mentioned, that most of the members of the Board have carefully examined as many as fifty volumes of works in order to decide upon their fitness for a common school library. In the above statement, the time, services, and expenses of the governor and lieutenant governor are not included. Each of them is *ex officio* a member of the Board, and their services are rendered without charge.

2d. As to the "expenditures" of the Secretary of the Board, as compared with his "compensation."

My duties were specifically prescribed by the 241st ch.

of the statutes of 1837, and the 159th ch. of the statutes of 1838. After accepting the appointment of the Board, I was requested by them to prepare the "Annual Abstract of the School Returns," for 1837. Although this was no part of my duty, yet I gladly undertook the labor, as I was desirous of having the Abstract in an improved form, of adding some new items to the information it should contain, and of presenting the county aggregates separately, which had never been done before. It made a document of more than 300 pages, and occupied myself and a clerk at least four weeks. I paid the clerk \$45 out of my own pocket. Neither for my own services in relation to this matter nor for the money paid for clerk-hire have I ever charged any thing or ever expected to.

Immediately after my appointment, I began to receive letters from all parts of the State, on various subjects, connected with common school education, and have undoubtedly received and answered more than a thousand within the last eighteen months. I think my postage bills cannot have been less than \$150. After the law passed for the establishment of Normal Schools, great interest was manifested in different parts of the State in regard to the location of those schools. This led to correspondence with the board, and most of it, was carried on through me. This of course increased both labor and expense. As the law had made it no part of my duty either to perform any service or to incur any expense in regard to Normal Schools, I consulted with some of the members of the Board at their meeting in the last week of last December, and they were of opinion that my expenses for postage, stationary, &c. were a part of the incidental expenses of the Board, provided for in the act of 1838, ch. 55.

I have kept no exact account of "expenditures" for stationary, but I suppose that for the preparation of the "Abstract" before mentioned, for correspondence, reports, &c. it must have been thirty or forty dollars.

Applications having been received by the Board from twelve different places in the State to have one of the Normal Schools established in their respective vicinities, and the Board, deeming it advisable that several of those places should be visited in order to determine their relative eligibility, as before stated, I was appointed on all the committees raised for that purpose. In serving on these committees, I travelled more than three hundred miles, the expense of which was probably \$30 more. This was all additional to my travel in visiting the counties as prescribed by law. At the meeting of the Board in December last, I made the following charges on account of the above expenses, which were allowed by the board, viz. on account of all my postage I charged \$25, for stationary \$10, and for visiting different places in the State in reference to Normal Schools, \$17, making in the whole \$52, or less than one fourth part of what I had in fact expended, exclusive of the \$45 paid for clerk hire, and \$50 paid for the edition of the lecture before mentioned, for which no charge was ever expected to be made.

My salary from July 1, 1837, to April 21, 1839, was at the rate of \$1000 a year. Since the last named time, it has been at the rate of \$1500 a year. About half this sum is absorbed in travelling and other necessary "expenditures;" the residue is the "compensation" I receive for my whole time and such services as I am able to render.

I believe I have now answered each branch of the "order" of the Senate, with the particularity it indica-

ted. In speaking of services, performed at the request of the Board, but not required by law, I wish it to be understood, that I have not referred to them for the purpose of objecting in the slightest degree to the labor of those services, but only for the purpose of distinguishing between the "expenditures," which properly belonged to my office, and those which did not ;—and should any thing in this statement seem too personal, as it regards myself, I trust an apology may be found in the fact, that when an inquiry is made of a public officer, respecting expenses, he may have incurred, none but the fullest explanation is likely to be satisfactory.

Very respectfully,

HORACE MANN,

*Secretary of the Board of Education.*

*Boston, March 11th, 1839.*

## SENATE....No. 52.

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### Commonwealth of Massachusetts.

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IN SENATE, Feb. 21, 1839.

*Ordered*, That the Committee on the Judiciary consider the expediency of establishing separate terms of the Court of Common Pleas for the County of Middlesex, for the transaction of the criminal business thereof.

Attest,

CHARLES CALHOUN, *Clerk*.

**Commonwealth of Massachusetts.**

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SENATE, March 15, 1839.

The Committee on the Judiciary to whom was referred an order, to inquire into the expediency of establishing separate terms of the Court of Common Pleas for the County of Middlesex, for the transaction of the criminal business thereof, have considered the same, and report the accompanying bill.

SAMUEL B. WALCOTT,

*For the Committee.*



## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Thirty-Nine.

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### AN ACT

Establishing Additional Terms of the Court of Common Pleas in the County of Middlesex.

*BE it enacted, by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :*

1    SEC. 1. There shall be holden in the county of  
2 Middlesex, three additional terms of the court of com-  
3 mon pleas, as follows, to wit : the first term shall be  
4 holden at Concord, on the fourth Monday in June  
5 next ; the second term shall be holden at Lowell, on  
6 the first Monday in November next ; and the third  
7 term shall be holden at Cambridge, on the second  
8 Monday of February next ; and a term of said court  
9 shall be holden on the same days and at the same  
10 places, in each year thereafterwards, for the disposi-  
11 tion of the criminal business of said county.

#### 4 ADDITIONAL TERMS COURT C. P. [Mar. '39.

1 SEC. 2. All appeals, recognisances, and processes,  
2 and every other matter and thing of a criminal nature,  
3 which would be returnable to, or have day in the  
4 court of common pleas, to be holden at Concord,  
5 within and for said county, on the second Monday of  
6 June next, if this act had not been passed, shall be  
7 returnable to, and have day in said court at the term  
8 thereof, hereby established at said Concord, on the  
9 fourth Monday of June next.

1 SEC. 3. The civil business of the court of com-  
2 mon pleas, in the county aforesaid, shall be transacted  
3 only at the terms of the said court heretofore by law  
4 established. And the criminal business thereof shall  
5 be acted upon only at the terms of the said court,  
6 herein appointed to be holden. And all continu-  
7 ces of civil or criminal business shall be, without any  
8 special order therefor, to the next term of said court,  
9 to be holden for the transaction of business of the  
10 same description.

1 SEC. 4. The grand jurors of the said county of  
2 Middlesex, shall be required to attend only at the  
3 said terms established for the transaction of criminal  
4 business.

SENATE.....

.....No. 53.

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# R E P O R T

ON PROVIDING FOR THE

*Appointment of a Board of Agriculture,*

AND A

STATE CHEMIST,

TOGETHER WITH A

MINORITY REPORT.

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**Commonwealth of Massachusetts.**

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IN SENATE, Feb. 12, 1839.

*Ordered*, That the Committee on Agriculture be instructed to inquire into the expediency of providing by law, for the appointment of a Board of Agriculture, and also for the appointment of a State Chemist.

Attest,

CHARLES CALHOUN, *Clerk*.

## Commonwealth of Massachusetts.

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SENATE, March 14, 1839.

The Committee on Agriculture to whom was referred an order "to inquire into the expediency of providing by law for the appointment of a Board of Agriculture and also for the appointment of a State Chemist" have considered the same and submit the following

## R E P O R T .

It has long been the settled policy of the government of Massachusetts to encourage agriculture. To foster industry and encourage agriculture was, at the adoption of the Constitution, pointed out as among the important duties of future legislatures, and perhaps the wisdom of those to whom we are indebted for that instrument, is no where more conspicuously manifest than in enjoining this duty. Of its necessity and the soundness of its policy two of the most powerful nations of Europe presented at that time illustrious examples.

Spain with the wealth of the Indies poured into her lap

for successive centuries was becoming poor and fast sinking under her system of letting agriculture take care of itself. Gathering rich harvests of gold and silver in the new world the more valuable and enduring harvests of domestic industry were neglected and forgotten, and gilded pauperism and splendid degradation were the fast appearing legitimate fruits ; evincing the justice of an over-ruling power, whether considered as the result of idleness at home, or avenging retribution for national treachery and injustice abroad.

On the other hand, the policy of England was of an opposite character and producing opposite results. With a protected and encouraged agriculture to sustain her manufacturing industry, she was laying deep the foundations of her power, and fast rising in the scale of empire, and strengthening herself for a tug in later times, with the captain, whose will was law to continental Europe ; who gave kingdoms as mere keepsakes, and infusing into the millions of his conscripts the spirit of martial madness, trampled nations to silence in his grasp at universal dominion. From this contest, expensive, protracted and bloody, almost beyond precedent, by untiring industry in her fields and workshops, she came out, dictating terms of peace, her resources comparatively but little impaired, and the riches of her people almost undiminished ; demonstrating the position, that the basis of true national strength consists more in the science of peaceful arts, than in the art and science of war—less in well appointed armies, than in a well appointed agriculture.

Agriculture is not only the basis of national strength and wealth, but it is also the basis of civilization and social life. Christianity itself, after repeated attempts without the aid of agriculture, has failed to civilize the Amer-



ican savage ; nor have its influences, without the same aid, been more successful in preventing the relapse to a state of barbarism of the once civilized Asiatic. The culture of the earth is as necessary also to sustain social life, as is the culture of the mind to sustain civil liberty ; and as truly as the fall of our free institutions would follow the entire neglect of education, so truly will the dissolution of civil society follow the abandonment of agriculture. The agricultural skill of any people is nearly a correct indication of the amount and permanency of their social comforts, for it is only that portion of all the densely populated parts of the earth, where some degree of skilful agriculture is practised, that is never visited by famine.

Although as an art, agriculture is coeval with our race ; as a science it is yet in its infancy, and opens an extensive field for discovery and improvement. It may be reduced to principles as certain as those of almost any other science, by carefully collecting the results of similar combinations of circumstances.

Science has shed its light freely and abundantly upon other interests, and cannot its rays be brought to bear more directly and fully upon that of agriculture ? It should assist the hands that guide the ploughshare and pruning-hook, as well as those that hold the tiller or drive the shuttle.

The production of an ear of grain or a blade of grass is as much the effect of cause, as is the explosion of a steam engine, and although the connection between cause and effect may not be as easily traced in one case as in the other, its existence is no less certain ; nor is its investigation less a proper subject for scientific inquiry, or of scarcely less importance in a public point of view. If the latter has effected the destruction of a multitude, the former has been as necessary to the sustenance of mil-



lions. Science, or demonstrative knowledge, is as necessary for the agriculturist as for the navigator. Without it the farmer is a mere machine, pursuing the path trod by his fathers, and surrounded by a trackless ocean of uncertainty, into which, however he may avoid it with instinctive dread, he is occasionally plunged much to his discomfiture and loss. This would not be the case if he clearly understood the principles on which production is founded; then he might step out of the beaten path with safety, the trackless course would be as certain as that of the mariner guided by his compass; he could feed his roots, grains and grasses with their appropriate food and calculate results with certainty, except as varied by accident or season; his dependence would be upon known principles, established truths, rather than tradition. Let him clearly understand the deficiency of his soil, and what aliment it is necessary to present to the germinating plant to bring it to perfection, and what is necessary to counteract or neutralize a superabundant or deleterious substance existing in the soil, and he will produce his crop of grain with as much certainty and facility, aside from extraneous causes, as the architect can erect a grainery in which to store it. It is this knowledge which the farmer wants, and he can get it only by the aid of chemistry. It is this knowledge which the farmer must have, in some good degree, before his profession will stand where nature designed it to stand—the first among the first. No occupation is more healthful or useful, and none is better calculated to expand the mind and develop the noblest qualities of man. Although his avocation is laborious, the toil of the *intelligent* farmer is far from servile drudgery. A sense of inferiority of profession he cannot feel, for no other stands nearer creative power, or is first

the recipient of the Creator's bounty. In the great laboratory of nature he aids according to his intelligence in the transmutation of various substances otherwise useless, to grains and fruits, the product of field and garden for supplies of necessity, of comfort, or of luxury; and what mind in employment so elevated but must in some measure lose its contracting power? or who can better appreciate the lustrous beauty of the "bow in the cloud," the bright seal of the promise that "seed time and harvest shall not cease," than those that sow the seed and labor for that harvest, without which, the foundations of society must be broken up, the minister come down from the altar, and the judge from the bench, to seek subsistence, perchance, from river or forest?

The value of the agricultural products of the Commonwealth, compared with the value of the products of other branches of industry, it is believed, would present the importance of the farming interest in a strong point of view. Unfortunately a bill for the obtaining of these statistics was lost in the last legislature, and that important fact,—the relative value of our agriculture, which should be well known, and well understood,—remains a matter of conjecture.

It is estimated from statistics of the British empire that the annual return from the land and farming stock of the united kingdom is £474,029,688, and the annual return from the property in manufactures is £262,085,100, the manufacturing product bearing to the agricultural product nearly the proportion that five does to nine.

As the manufactures of Massachusetts are principally the growth of but little more than thirty years, it would be considered wonderful if on examination they were found to bear the proportion to our agriculture that those

of the united kingdom do to theirs, but unless they exceed that proportion, it will be seen by referring to the statistical returns of our manufactures in 1837, and taking those returns of eighty-six and a quarter millions of dollars to indicate the true product of our manufactures, that the products of the land and farming stock of Massachusetts in that year could not have been less than one hundred and fifty-five millions of dollars. However much or little dependence may be placed on this estimate, it can hardly be doubted that the magnitude of our agricultural interest is not appreciated.

By the last census the population of the State was about 700,000. Of this number not less than 400,000 are supposed to be engaged in agriculture, and dependant directly and entirely upon that source for subsistence. Of the remaining 300,000 a very considerable number are more or less engaged in the same pursuit a part of their time; and as all engaged in manufacturing and commercial operations are deeply interested in the success of the farmer, as it affects the price and facility of obtaining agricultural products, your Committee believe they may safely assume that no branch of domestic industry is more important. They also believe that no one is more susceptible of improvement, and, so far as improvement goes, that no one is so much neglected.

The labor that would purchase a bushel of corn thirty years ago, will now purchase only about the same quantity; whereas the labor that would purchase a yard of cotton cloth thirty years ago will now purchase at least four yards of as good quality. This advance in the value of labor, when applied to the purchase of cotton cloth, arises from improvements during the term specified, by introducing labor-saving machinery, and directing more

science and skill to the production of the cotton and the manufacture of the cloth ; and if improvements to the same extent had been made in the production of corn, the result would have been the same, without diminishing the profits of the producer.

The same general result will be the effect of the same cause when acting on any or all the products of labor. All improvements, whether by the aid of economy, science or skill, or of labor-saving implements applied to production, increase the value of *labor*, the only capital of many of our citizens, and, in the aggregate the great *capital* of the Commonwealth ; a capital which wise legislators will always encourage in seeking investment at home, at least when, all things considered, it can be done with better advantage than abroad. A case will be mentioned to show the advantage that may be derived from a scientific and thorough investigation of a subject, that is supposed to be pretty well understood. It also accounts for the great advance which manufactures have made over agriculture; and points out the necessity and propriety of the aid of government to assist in settling questions of importance to our farmers, which, from involving an expense of perhaps a few hundred dollars, their limited capital cannot meet ; and unless the government aid them, they must from necessity be content to plod along in the old path, save the adoption of some few improvements, which slight research and invention bring to light.

Recently a manufacturing company incurred an outlay of not less than five thousand dollars, for agency and expenses attending a series of experiments to solve a question relative to some part of their process. The solution of the original query was a saving to the company of its whole cost in about one year, and other matters unlooked

for, which came in incidentally during the investigation, effected a further saving to an equal amount during the same year; it was also the acquisition of knowledge that must bear upon all their future operations to which it had reference, and this all, in a branch of manufactures where it was generally supposed that further improvements were hardly to be expected. If such results can be realized in such cases, what may be expected from investigations in the young science of agriculture, a science that has hardly obtained a name and place among the sciences?

Aside from the general want of chemical knowledge applicable to their profession, but few individual farmers can meet the expense, that would be necessary to a thorough investigation of many subjects that have a permanent and important bearing upon their success. And it is believed that they cannot reasonably be required to do so, when it is considered that their success is so closely connected with the success of every other valuable interest in the Commonwealth, that men of all other professions and pursuits are hardly less interested in the matter than farmers themselves. And if any subject whatever will justify the special attention of the Legislature, and, if need be, an especial appropriation from the treasury of the Commonwealth, on the ground that the whole people are deeply interested in its success, your Committee are of opinion that it is the subject which they now have under consideration.

Our means for improvement are far from being limited. The geological survey of the State by Professor Hitchcock has brought to light treasures, more valuable than mines of gold, and if the facts and suggestions submitted in his second report are duly attended to and improved, the survey cannot fail to be the commencement of an era

in our agriculture—the laying of the first stone in the foundation of an improved structure that will sustain and secure the best interests of the Commonwealth.

In addition to lime, marl and other mineral substances of great value to the farmer, large quantities of geine, or the principle that gives fertility to soils, is found to exist in the vegetable deposits of our swamps and lowlands. This fact is a most important one to the farmers of the Commonwealth. It discloses to us the truth that there exists in almost every neighborhood, abundant means of recruiting our wasted soil. A kind Providence has garnered up these immense magazines of food for vegetables to restore fertility for us, to those grounds that were exhausted in sustaining our fathers, while in council laying the foundations of our free institutions, and in the field battling for the right of man to self-government. Compared with theirs, ours is a time of leisure, and duty requires that we avail ourselves of the means put into our hands of improving our physical condition, until the necessities and comforts of life are in as full measure enjoyed by all within our borders, as the freedom which they wrought out for us, and in no other way can we so well execute the trust committed us while holding on to their bequests.

The mere knowledge of the fact, however, that this enriching matter, which contains the constituent principles of our grains and grasses, exists so abundantly, is of comparatively little practical utility, unless accompanied with the proper knowledge of disengaging it from the useless or deleterious substances with which it is combined, and fitting it for the wants of vegetation. To obtain this knowledge requires the aid of a practical chemist, and there is little doubt that with this aid, manure, which has

properly been termed "the sinews of husbandry," can be furnished abundant as the wants of our soil, and cheaper than by any other means. The expense incurred for a lifetime of service of a practical agricultural chemist, would be a cheap purchase for the Commonwealth, at which to put our farmers in possession of the information that would enable them to make the most economical and efficient application of this material, which we are assured contains in greater abundance, than can be drawn from any other source, the enriching properties furnished by the most expensive manures. It has been accumulating for ages, and held in reserve until farmers begin to learn that a renovated field under a judicious system of cultivation will give the most profitable succession of crops, and at the same time amply furnish the means of perpetuating and increasing its own fertility. Under these circumstances the interest of the cultivator affords the strongest guaranty that if fertility is once restored to those fields that are reduced, we may feel well assured that they will never again become exhausted as they have been; but increasing in fruitfulness, and supplying the wants of increasing multitudes, will continue to give "seed to the sower and bread to the eater," as long as peace and security allow the farmer to gather his sheaves, and preside at his own harvest-home.

The muck of our swamps from different localities may very considerably differ in the number and proportions of its constituent parts, and accordingly require very different treatment to fit it for the farmer's use. A chemist employed by the State, under the direction of a Board of Agriculture, would undoubtedly spend some time to great advantage in determining the best mode of treatment applicable to the whole, or to the different localities, as should be found necessary.



The whole subject of manures, whether animal, vegetable, mineral or compound, and the best method of compounding, would also properly, and no doubt profitably, engage his attention. A more general, and if possible a more perfect analysis of our soils, would also be of great utility. Indeed it is hardly possible that a competent chemist should be employed under the direction of a competent board without rendering immense service to the farmers of the Commonwealth.

A Board of Agriculture, composed of scientific and practical men, properly selected from different sections of the State, would be likely to secure the public confidence and respect. Their recommendations of improved implements, or improved modes of culture, or of improvements of any kind, if judicious, would soon secure the most favorable attention of farmers, and give a fresh impulse to production. Agricultural implements, purporting to be improvements, are often to their injury forced upon the attention of farmers, by those interested in the sale. This would not as frequently be the case, were a competent board to obtain the confidence of farmers and become the channel through which real improvements alone might be expected to find favor. The recommendation of the board would be found no less convenient for the vender of a real improvement, than for the farmer, who possesses in a more limited degree, the means of comparing and deciding important questions of this kind to his own satisfaction.

The great importance of improved implements of husbandry, your Committee believe is not duly appreciated. An instance will be mentioned, of somewhat recent occurrence, of which they have personal knowledge. A field in common was divided between two neighbors and

planted with corn. As it had been previously subjected to the same treatment, the line of division was supposed to give each party an equal chance for a crop. The same variety and from the same parcel of corn was planted in the two cases, and in both cases the after cultivation was seasonable and similar. In one case a new plough of improved construction—but hardly known in some parts of the State—was used, and a crop of forty-five bushels per acre obtained. In the other case a new plough of a pattern that is in extensive use in some parts of the State, was used, and a crop of thirty-five bushels per acre obtained, and this, with the additional expense of at least two dollars in labor to remedy the defects in the ploughing. Here were ten bushels of corn and two dollars in labor, in the cropping of a single acre, gained, without any other assignable cause, than, to say the most, the skilful use of an improved plough—and that, perhaps, not the best—over the common use of a plough, certainly not the worst, and by many considered good. No manure was used in either case, and the gain and saving by the improved plough was fully equal to the whole expense of making the crop, yet old ploughs will be used. Farmers have been imposed upon and disgusted so much with patterns got up without skill or science, or apparently the least knowledge of, or reference to, the principles involved in the case—*improvements* from bad to worse—that in many cases they look with distrust upon every thing that bears the name of improvement. The removal of this prejudice is a matter of no little consequence, and would be attended with the happiest results. The amount of labor misapplied, as may be inferred from the case cited, is an immense tax upon the industry of the Commonwealth, and the saving or beneficial application

of it will tend directly, in proportion to its amount, to swell the aggregate wealth of the State, as well as promote the interest of individuals; and the Committee believe that no measure is more likely to accomplish this desirable object than the operations of a judicious Board of Agriculture.

Indeed the plough, which lays at the foundation of all good husbandry, or improvement in cultivation, affords of itself, matter sufficient to justify the appointment of a board. To examine new claims, and determine among them and the great variety of patterns already in existence—by accurate and careful experiment on philosophical principles—which is best for the various descriptions of work, would be of great service to farmers who have not the means necessary to institute a just comparison. It is of great importance that this implement should possess other qualities than merely that of being made of cast-iron. If it is not yet discovered, there is undoubtedly, some certain angle of elevation and curve of share and mould-board best calculated to raise and turn the sod in the easiest and most perfect manner, and if the investigation of the subject should result in discovering which now in use is best, or in the invention and general use of a still more perfect pattern; the benefit to the farming interest could not easily be calculated: for if the operation of ploughing is not well performed, no after cultivation practised in our fields, however laborious it may be, can remedy the defect; a loss of labor, a waste of the energies of the soil, and a diminution of crop, are the almost inevitable results. The Committee would urge the importance of the subject as a reason for going so far into particulars.

The establishment of a Board whose duty it shall be

to suggest, from time to time, for the consideration of the Legislature, such measures as the interests of our agriculture may require, and to devise means for its improvement, and indeed, to have a general inspection of the whole subject, is certainly a more systematic method of proceeding, and much more likely to meet promptly the reasonable demands of this great interest, than the present method of appointing a committee of the Legislature for a single session to whose notice specified subjects only are committed.

In constituting the board it is of the first importance that it should embrace men of thorough chemical knowledge, applicable to agriculture, as well as scientific and skilful practical farmers; as it is only by the combination of science to plan, with skill to execute, that improvements are to be expected, and from a board of intelligent men thus constituted, is it too much to expect the advancement of the agricultural interest? No question can arise connected with agriculture however important or difficult that would be likely to be disposed of any other way, better than by reference to a board thus constituted. The subject of bounties, premiums and appropriations for the improvement of agriculture, would properly engage their attention, and had the board existed a year since, perhaps the money paid from the treasury for bounty on wheat the past season, would have taken a different destination, for the same reason that the merchant will not invest in purchases that will yield but twenty-five per cent. when he can as well invest where it will give fifty in the same time.

The Committee will not attempt to anticipate all the objections that may possibly be brought in opposition to their views on this subject. The principal, and, as they

believe the only real ground of objection is the expense. Perhaps it will be said that, in the present state of our treasury, we cannot afford the appropriation necessary to carry out the measure. In reply, the Committee would say, that we cannot *afford* to remain ignorant of our resources. It is a false economy that interposes to prevent a judicious and necessary expenditure. In this case it is like the economy of the merchant who refuses the expense of a compass for the ship in which he embarks his wealth; the amount to be expended is almost nothing, compared with the object to be secured. If, as is believed to be the case, the products of our farm stock, and of our soil and the labor applied to it, amount to one hundred millions of dollars annually; an increase of this product of one per cent., if it can be effected by an improved application of the same amount of labor and expense—and who acquainted with the subject can doubt that much more can be done—will give a clear saving to individuals of one million of dollars, and increase the aggregate wealth of the State by that amount annually. One half of one per cent. of this saving would keep a chemist in the constant employ of the Commonwealth, meet all the expense of the board, and leave a considerable surplus to promote the general object. It is wasteful extravagance in effect to continue the reaping of scanty harvests, where means of improvement abound. If we do indeed—as we are assured by our intelligent geological surveyor—possess in exhaustless abundance the means of cheaply enriching our farms, we cannot afford to remain ignorant of the process.

To leave the procuring of these desired results to individual enterprise, is to delay the reception of a great public good until it can be secured at individual expense,

or a loss of many thousands to save a few hundreds. It is reversing one of the primary objects of our government, drawing in, instead of carrying out, the principle of encouraging industry.

To increase our resources, may be as wise and may as effectually relieve our treasury from future embarrassment, as cutting off necessary expenses. It certainly will be more effectual in furnishing means to carry out the broad plans of general education and general benevolence adopted by former Legislatures. These plans, which justly make one proud to hail from Massachusetts, require and will continue to require, large appropriations of money. They tell for the intelligence and glory of the Commonwealth, and the patriot and philanthropist must rejoice in their continuance.

The great objects of the board should be to devise and execute, under the sanction of the Legislature, measures to develop our agricultural resources, and add to our substantial wealth—the value of our soil;—to bring science to the aid of our farmers, and increase the value and the reward of labor. These objects are worthy the appointment of the board; and—to accomplish them is worthy the highest efforts of those who may be called to the trust, and merits the co-operation of every farmer, and the good wishes of every citizen of the Commonwealth.

With these views, the Committee recommend the adoption of the following Resolutions.

For the Committee,

WILLIAM CLARK, Jr.

## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Thirty-Nine.

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## RESOLVES

Providing for a Board of Agriculture and State Chemist.

*Resolved,* That there be appointed by the Governor with the advice and consent of the Council, one person from each congressional district in the Commonwealth, who shall constitute a Board of Agriculture, and shall hold their offices for the term of three years, and all vacancies in the Board shall be filled in the same manner as the original appointment is made; the Governor shall also appoint the first meeting of the Board. The Board shall meet in Boston once at least during the session of the Legislature, and as much oftener, not exceeding three times in each year, as they may think necessary, and at such place as they may determine. They shall elect from their own number, a president and secretary, and may adopt rules for their own regulation. The Board



shall elect a chemist, fix the compensation for his services, and direct his labors in making such investigations, experiments, and analyses, as in their opinion will best develop the agricultural resources of the Commonwealth, and render the most effective assistance to the farmer. It shall be the duty of the Board to suggest for the consideration of the Legislature such measures as the interests of agriculture may require, and report the same with a detailed statement of their transactions and investigations to the Governor annually.

*Resolved,* That the members of the Board of Agriculture shall receive the same compensation for travel and attendance, which is now paid county commissioners, and the Governor shall draw his warrant therefor accordingly.

## MINORITY REPORT.

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### Commonwealth of Massachusetts.

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IN SENATE, March 16, 1839.

The undersigned, a minority of the Committee on Agriculture, to whom was committed an order of the Senate of February 12th, with instructions to consider the expediency of establishing a Board of Agriculture, and the appointment of a State Chemist, has considered that subject, and a majority of the Committee have reported that it is expedient. The undersigned concurs with a majority of the Committee in their statement of the vast importance of agriculture, and of its immense benefits. It is surely the cultivation and the productions of the earth, which gives us our wealth, prosperity and subsistence, in a far greater degree than from all other sources from which wealth is created. The producers are the only class of men who add to the wealth of the nation; all others being mere speculators on their labors. These being the opinions of the undersigned, it is his desire to aid in any measure, having for its object the promotion of individual and national wealth, and having a direct ten-

dency to benefit the hard-handed yeomanry of Massachusetts, who, of all people in the State, deserve encouragement, and have had the least of it from the Legislature.

It will not be denied but that the measures proposed, were they properly directed and applied, might produce beneficial results. Yet it is doubted whether they would in any great degree compare with the expense incurred. Past experience is a teacher by no means to be disregarded. And if the course hitherto adopted to aid the practical farmer, is still to be pursued, it is rendered nearly certain that the appointment of a Board of Agriculture and State Chemist, as recommended by a majority of the Committee, will not promote the object intended.

The agricultural survey, now in progress, is evidence to the undersigned, of the misapplication of the revenues of the State; and may afford evidence, that a State Chemist would derive more benefit from his salary than would the farmers from his researches.

If the agricultural societies have failed to afford the benefits anticipated, it may well be doubted whether any greater would result from a Board of Agriculture, especially if the members of the board are to be selected from mere theorists in agriculture. The appropriations and expenditures of the State are now, for the agricultural survey, agricultural societies, and those of natural history, about eight thousand dollars per annum, which does not operate to favor the practical and laborious farmer, to be at all compared to the expenditure. And in the present exhausted state of the treasury, there ought not to be any increase of expenditure of doubtful utility, the result of which will be to throw a heavy burthen on the farmer, who must soon be compelled by taxation to yield from his

hard earned gains his quota of tax, for paying salaries, and other expenditures of the State of the like nature, which are rapidly increasing, and if continued, must in a few years be oppressive.

With these views, and other considerations, which the undersigned will forbear to mention, while yielding to no one in the high estimation of the farmers, and believing them to be the most substantial portion of the community, whose moral worth is almost universally overlooked by other portions of the community, entertaining also the greatest respect for the opinions of the majority of the Committee, still he is compelled to come to a different conclusion from them, and to hope the measures proposed by the majority may not be adopted.

The undersigned being clearly of opinion, that the interests of the farmers will be better promoted by being left without legislative interference, either by direct attempts to aid them, or by conferring on others special privileges by acts of incorporation which, in effect, abridges the natural rights of others.

Which is respectfully submitted by

SETH WHITMARSH.



## **SENATE....No. 54.**

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### **Commonwealth of Massachusetts.**

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**IN SENATE, March 16, 1868.**

**The Committee on Banks and Banking to whom were referred the petition of S. Conant and others, and Thomas Smith and others for new Banks ; and also the petitions of the Suffolk and Merchants Banks of Boston, for an increase of Capital Stock, ask leave to**

## **R E P O R T,**

Believing as they do, that monied institutions have an important bearing not only upon the commercial prosperity but upon the general interests of a community, they have endeavored to give to these different petitions all the consideration their importance demanded. They are not unmindful of the high standing of the applicants, nor of the strength of their claims. The Committee have, however, thought it advisable to take a general view of the subject, and when they consider the severe trials to

which this class of corporations has been subjected for the last two years, and the immense losses which the community has sustained from the bad management of a portion of them, and that not three months have yet elapsed since the banks in this Commonwealth were required to meet all demands upon them in specie: and when, in addition thereto, they contemplate the new system of banking introduced, to an alarming extent, into a neighboring state, a system altogether novel in our country, the result of which it may be difficult to foresee, the Committee feel constrained to urge upon the Legislature the propriety of pausing, for at least one year, before they shall create new banking institutions, or increase the capitals of those already in existence. They therefore, unanimously recommend, that S. Conant and others, Thomas Smith and others, Suffolk Bank, and the Merchants Bank, have leave severally, to withdraw their petitions.

For the Committee,

SAMUEL T. ARMSTRONG, *Chairman.*



**SENATE....No. 55.**

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**Commonwealth of Massachusetts.**

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IN SENATE, March 18, 1839.

The Joint Committee on Mercantile Affairs and Insurance to whom was committed the petition of Elias Haskett Derby and others, praying to be incorporated as the Ocean Steam Packet Company, respectfully report the accompanying bill.

Per Order,

**GEORGE B. UPTON, *Chairman.***

**Commonwealth of Massachusetts.**

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In the Year One Thousand Eight Hundred and Thirty-Nine.

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**AN ACT**

To incorporate the Ocean Steam Packet Company.

**BE** *it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :*

1 SEC. 1. E. Hasket Derby, Charles Leighton,  
2 Arnold F. Welles, their associates, successors and as-  
3 signs, be and they hereby are, made a corporation by  
4 the name of the Ocean Steam Packet Company, for  
5 the purpose of navigating the ocean by steam, and  
6 for this purpose shall have all the powers and privi-  
7 leges, and be subject to all the duties, restrictions and  
8 liabilities set forth in the forty-fourth chapter of the  
9 Revised Statutes.

1 SEC. 2. The said company may hold one or more  
2 steam packets, and may therewith navigate the ocean  
3 between any port or ports in the Commonwealth of  
4 Masaachusetts and Europe, or between such port or  
5 ports, and any island, provinces, or possessions of any  
6 European powers, and may enter into any treaties or  
7 contracts with other persons or corporations they may  
8 deem essential to bring steam packets from other  
9 ports to this Commonwealth.

1 SEC. 3. The said company may lawfully purchase,  
2 hold, and convey real estate not exceeding the value  
3 of one hundred thousand dollars, and personal estate  
4 not exceeding the value of six hundred thousand dol-  
5 lars.

1 SEC. 4. The stock of said company shall be di-  
2 vided into shares, the amount whereof shall be fixed  
3 by the by-laws of said company, and which shares  
4 shall be subject to attachment and sale in like man-  
5 ner as the shares of debtors in other corporations;  
6 and said corporation shall have power to assess on the  
7 several members thereof, from time to time, such  
8 sums of money as they shall deem necessary to effect  
9 the objects of said corporation, and the members of  
10 said corporation shall be individually liable thereto  
11 for the sums thus assessed upon their respective  
12 shares: *provided*, that no share shall be assessed a  
13 greater sum than the amount thereof fixed by the by-  
14 laws of the corporation. And said corporation may  
15 provide for the sale, by public auction, of any share or  
16 shares, whenever any assessment thereon shall be due  
17 and unpaid.

1 SEC. 5. The said corporation shall continue for  
2 the term of thirty years: *provided*, that they shall,

**4 OCEAN STEAM PACKET CO. [March, 1839.**

**3 within two years after the passing of this act, organ-  
4 ize the said company, and cause an assessment of not  
5 less than ten per cent. upon the capital stock to be  
6 made and collected, for the purpose of carrying the  
7 same into effect.**





**SENATE.....**

**.....No. 56.**

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**REPORT AND BILL**

**RELATING TO**

**CHARLES RIVER AND WARREN BRIDGES.**

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## **Commonwealth of Massachusetts.**

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The Joint Standing Committee on Roads and Bridges, to whom were referred “so much of His Excellency the Governor’s Address as relates to Warren Bridge;” and the Special Message of His Excellency the Governor of the 16th of January, communicating to the Legislature a report of the Agent of Warren Bridge, in relation to the decayed and dangerous condition of said bridge; and the petition of Simon W. Robinson and 523 others, citizens of Boston; and the petition of Abraham R. Thompson and 397 others of Charlestown; and the petition of Joseph Peabody and 17 others citizens of Salem; and the petition of Joel Knight and 146 others of Ipswich; and the petition of David Bowker and 22 others of Chelsea; and the petition of Samuel Payson and 58 others of Holliston; and the petitions of Peter Dunbar and 64 others, and James Cheever and 63 others of Boston; and the petition of Benjamin Brintnall and 34 others citizens of Malden; and the petition of Nathan Webb and 146 others of Charlestown, severally, praying that Charles River Bridge may be opened for public travel;”—and to whom were also referred the petition of George W. Warren and 415 others of Charlestown; and the petition of Leonard

#### 4 WARREN & CHARLES R. BRIDGES. [March,

Brown and 136 others of Lexington ; and the petition of John H. Wright and 104 others of Stoneham ; and the petition of Joshua Avery and 159 others of West Cambridge, "praying," severally, "that Warren Bridge may be kept free from tolls, and that the Warren Bridge Fund may, as heretofore, be applied exclusively to the repairing and maintenance of said bridge ;" and to whom, was also committed "a Memorial of the Proprietors of Charles River Bridge, respecting the opening of said bridge for public travel,"

### R E P O R T :

That they have given to the various subjects brought under consideration by the above-named petitions and memorials, a large portion of the time and attention at their disposal ; they have patiently listened to all the evidence, suggestions, and arguments, adduced by the petitioners and memorialists, and have deliberately, and with as much candor as it falls to their lot to possess, considered and weighed them in all their bearings upon the questions involved, and the interests and honor of the Commonwealth ; and they have arrived at conclusions, which, if not perfectly satisfactory to themselves in every respect, are nevertheless the best, that, under the circumstances of the case, their ingenuity can devise.

The whole subject is beset with difficulties and with obstinate and conflicting interests on every side. A large, a very large share of the time and attention of the Legislature, for one topic, *so entirely local in its nature* to absorb, has been bestowed upon this subject, for the last *sixteen years!* The Committee will do no more than

allude to the repeated and earnest, if not fretful and angry discussions, which have so long disturbed the public mind, and distracted the public councils, and the great expense, which has been incurred by the Commonwealth in legislating upon the subject, more or less every year for this long series of years, as among the motives and considerations which have made them deeply and sincerely desirous that the Legislature should not allow this session to pass without bringing the matter to a close. It was obvious to the Committee, and must be obvious to the slightest consideration of any one, that, if the vexed questions growing out of the conflicting interests before alluded to, are ever to be settled at all, they must be settled by some compromise of those interests; by a spirit of candor in all parties, and by a forbearance in all to insist upon the extreme rights, which each may honestly suppose to belong to them. And this compromise, it belongs to the Legislature, and the Legislature alone, as the last arbiter, and representative of the sovereignty of the government, to effect.

The Committee are impressed with a conviction, however, which they will not disguise, that it would disembarass the questions submitted to them of some of their most perplexing aspects, if the Legislature were not itself, in some sense, a party in the controversy. But this position cannot now be avoided. The Legislature must pass judgment upon the questions submitted to them. Whether they act or forbear to act, their action or their inaction will alike decide many of the questions involved in the controversy. In this view of the case, and of the relation of former legislation to it, it would seem to be the duty of the Legislature, as invested for a time with some of the highest attributes of sovereignty, and especially

with the power of providing that equal justice shall be done between all the subjects of the government, to take such a position in the matter, as to show all the world, or at least all who may hereafter review the history of our legislation, that the sovereignty of this free government is at least as anxious to do justice as to compel its citizens to do justice,—and that the government of a free people, no less than the king in a monarchy, “regards its own honor more than its profit.”

The prominent points of the various petitions, remonstrances and papers referred to the Committee, are the following ;—fourteen hundred and eighty citizens of Boston and Charlestown, and sundry other towns, chiefly in their immediate vicinity, pray the Legislature “to open Charles River Bridge for public travel ;”—eight hundred and sixteen citizens of Charlestown, and three other towns in its immediate vicinity, pray the Legislature “to keep Warren Bridge free from tolls, and that the Warren Bridge Fund may be, as heretofore, exclusively applied to the repairing and maintenance of said bridge ;”—the memorial of the proprietors of Charles River Bridge reminds the Legislature respectfully, that said bridge is private property, and that they have as yet received no indemnity for the destruction of their franchise, as they say, by the acts of the Legislature ;—and the communication from His Excellency the Governor, covers a report of the agent of Warren Bridge, which represents the said bridge as in a decayed and dilapidated condition, now absolutely dangerous to the immense public travel, which must necessarily pass it, and becoming every day more so.

The petitioners who “pray for the opening of Charles River Bridge for public travel,” appeared before the Committee and supported the prayer of their petitions with

great earnestness and ability, and at *great length*. They represented, that all the considerations which originally justified and required the construction of the Warren Bridge as a second avenue from Charlestown to the city, to accommodate the public and promote its various interests, now existed in full and increased force to induce the Legislature to provide for the opening of Charles River Bridge for the public travel. A great many witnesses were adduced by the petitioners, and examined under oath, to prove that the travel between Charlestown and Boston had greatly increased since the construction of Warren Bridge, and especially since that bridge had become free of tolls. And the evidence, though differing somewhat as to the degree of increase, all went to establish the fact that the increase was very great. One of the most intelligent and competent witnesses upon that point, stated that the travel was now four times as great over Warren Bridge alone, as it was over both the bridges together while they were toll-bridges. Indeed, the public necessity and convenience of another avenue between Boston and Charlestown was admitted by all, and urged by a great majority of those who appeared before the Committee. The only diversity of opinion seemed to be as to the mode and means of opening the Charles River Bridge.

The other class of petitioners, who “pray that Warren Bridge may be kept free from tolls, and that the Warren Bridge Fund may, as heretofore, be applied exclusively to the repairing and maintenance of said bridge,” appeared also before the Committee, and urged a variety of considerations upon their attention, against putting a toll upon Warren Bridge as a means of opening Charles River Bridge, or as incidental to such a measure. This class

## 8 WARREN & CHARLES R. BRIDGES. [March,

of petitioners remonstrated against the taking of any portion of the Warren Bridge Fund to aid in purchasing or repairing the Charles River Bridge, or in any way connecting the two bridges together for any purpose whatever. They represented that the Warren Bridge Fund is pledged by an act of the Legislature to the support and maintenance of that bridge exclusively, and cannot consistently with good faith, be diverted in any degree, or for any time, to any other object whatever. These petitioners, although they admitted the necessity of another avenue to the city, did not think the necessity so imperious and overruling, as did those who prayed for the opening of Charles River Bridge.

The agent of Warren Bridge appeared before the Committee, and testified as to the decayed and dangerous state of that structure. And at his request, and the better to assure themselves of its real condition, as there was some diversity of opinion in regard to it, the Committee accompanied the agent to the bridge, and examined its timbers in sundry places, where the agent caused openings to be made in the rubble which covers the travelled part. The Committee were perfectly satisfied, as well from the representations of the agent, who has been especially conversant with the construction of that bridge from its commencement, and is abundantly able to state its condition fully, as from their own observation of the timbers exposed to their view now in the bridge, and of other and several pieces of the timbers, which have been taken out of the bridge and now lie exposed upon the wharf, that the bridge is in a state of rapid decay, as the agent in his communication represents, and that it cannot be long before it must be subjected to thorough repairs.

The agent, in his communication, says, "In five differ-



ent places during the past year, the flooring gave way ; the timber composing it being entirely decayed. Fortunately no injury or loss happened, except in one instance. By frequent examination under the bridge, we have hitherto been able (from indications of failure there to be seen,) to take up the top and put in new timbers before the flooring should actually give way and fall ; but it is almost certain, that, at a period not very distant, the passing must be stopped and a great part if not the whole of the flooring taken up and a more permanent one substituted."

" The enormous weight of the loads which daily pass the bridge renders it probable, that a number of timbers will e'er long give way under the immense pressure, and loss of life and property, one or both, must inevitably take place."

The proprietors of Charles River Bridge, on being served with a notice by the petitioners, that a prayer was pending before the Legislature for the opening of their bridge for public use, presented a memorial, which was referred to the Committee ; and the proprietors appeared before them, and in support of their memorial, presented various facts and arguments to their consideration.

The proprietors of Charles River Bridge, in their memorial, say " they have never questioned the power or the right of the Legislature to make use of their property for the good of the public ; all they have asked is, that they may have the benefit of that provision of the Constitution of Massachusetts which declares, '*that whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.*' "

The nature and extent of the claim of the memorial-

## 10 WARREN & CHARLES R. BRIDGES. [March,

ists upon the justice and equity of the government, for indemnity for the destruction of their property, they thus briefly set forth :

“ In 1785, the General Court, for good considerations, gave the proprietors of Charles River Bridge a solemn charter for forty years. In 1792, for equally good considerations, they made to them another solemn grant, by which they extended their charter for thirty years longer. By these charters the proprietors were entitled to certain fixed rates of toll through the whole period of seventy years, as a compensation for the cost of building the bridge and keeping it in repair, and for the encouragement of enterprise. Yet the Legislature of Massachusetts, first, by the act erecting the Warren Bridge, secondly by those acts which put a stop to the collection of tolls from persons passing over it, have made a free bridge by the side of Charles River Bridge, accommodating exactly the same line of travel, and of course depriving Charles River Bridge of all tolls. When the proceedings began, the proprietors of the one hundred and fifty shares in Charles River Bridge having bought them in the market, or having received them in the partition of estates, or in the payment of debts, had a property in them equal to two thousand dollars a share. Twenty years of the charter remained unexpired, when the Legislature of the Commonwealth thus took away the whole value of the property. By these several acts, the whole income of the bridge was annihilated, and several of the proprietors who had no other property, at once reduced to indigence.”

The memorialists close their communication by saying, “ that they are ready to come into any reasonable arrangement for opening their bridge, and that while they shall deem it their duty constantly to exercise their con-

stitutional right of petition until their claim is admitted, they sincerely hope that the present session of the General Court will not close without bringing to a termination this most unpleasant and to them ruinous controversy."

The Committee have endeavored, thus briefly, to place before the Legislature the views of the several parties in interest, who appeared before them, and to indicate a few of the prominent points in the arguments, by which the parties endeavored to sustain their supposed opposite and conflicting interests. The only obstacle in the way of granting the prayer of those petitioners, who ask for the opening of Charles River Bridge seems to be, that that structure is private property, and cannot be taken for public uses, without its being paid for. The state of the public treasury is not such as would at present allow the Legislature to draw upon it to any considerable extent for any public object, even if it were one of more general interest to the whole Commonwealth, than is the opening of another avenue between Boston and Charlestown. But under any circumstances, the Committee would find great difficulty in justifying an appropriation from the general funds of the State for an object so entirely local in its character. Other sections of the Commonwealth are burdened with their full proportion of the expenses of supporting roads and bridges within their own immediate neighborhoods, without assuming the additional burden of constructing and supporting the bridges between Boston and Charlestown. With these views, in which the Committee have great confidence the Legislature will fully concur, they were put upon devising some other means of purchasing and repairing the Charles River Bridge, than by a tax upon the public treasury.

## 12 WARREN & CHARLES R. BRIDGES. [March,

The Committee had great difficulty in fixing upon a sum, to be paid to the proprietors of Charles River Bridge, for their structure and franchise, which would at the same time be acceptable to the owners, and such as the Legislature would, under the circumstances of the case, be disposed to pay. The proprietors alleged, that upon any fair valuation of their bridge and franchise for the unexpired term of time the charter had to run, when the construction of Warren Bridge was authorized to be built by the Legislature, it was worth to them \$300,000. And the sales of the stock in the market, before the agitation of the subject of a rival bridge, fully justified this valuation. But the Legislature asserted a right to authorize the construction of another bridge to aid in accommodating the public travel in that direction; having found by evidence satisfactory to themselves that the public convenience and necessity required another avenue from Boston to Charlestown. And after protracted litigation they have vindicated by a decision of the highest judicial tribunal in the land, the constitutional right to locate another bridge by the side of the Charles River Bridge. In this decision the proprietors of the latter bridge acquiesce, but allege that, if the public convenience required another avenue between Boston and Charlestown, it did not, therefore, require it to be a free bridge. And if tolls had been kept upon the Warren Bridge as at first provided for, their property would have been lessened in value only one half. If it were worth \$300,000 while there was but one bridge, it would be worth one half as much if there were two to accommodate the same travel, or \$150,000. This value of their property, they contend, remained to them after the Legislature had adequately provided for the public conve-

nience and necessity, by authorizing a second bridge. But, by subsequent legislation, the rival bridge became free in the hands of the Commonwealth, and thus utterly annihilated the whole income of the Charles River Bridge.

Under these circumstances, the proprietors allege that their property has been taken by the Legislature for public uses, and they are entitled to indemnity. As to the degree and amount of indemnity, it is for the justice and equity of the Legislature to decide. But they allege that the decision of the constitutional question, as to the right of the Legislature to construct a rival bridge to theirs, and that a free bridge does not in any degree impair their claim upon the Commonwealth for a just and equitable indemnity for the destruction of their property. The Committee were of opinion, that the proprietors of Charles River Bridge are entitled to indemnity for the loss of their property ; but as before intimated, they found it difficult to fix upon any sum, which they could recommend to the Legislature to pay, and which would also be satisfactory to the proprietors. After a conference with a committee of the proprietors, and a full and free conversation between them and your Committee, as to the difficulties which seemed to surround the case on every hand, the Committee fixed upon the sum of \$50,000, to be paid to the proprietors in the manner provided for in the bill which accompanies this report. The proprietors of the bridge contended, that this sum was only one-third of the worth of their property, even if another toll-bridge were lawfully built by the side of their bridge. But the proprietors, by their committee, agreed to accept the sum named to be paid in the manner provided for in the bill, as compensation for their bridge and indemnity for the resumption of their franchise, or right to take tolls ; and

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to surrender both by a good and sufficient instrument, to the Commonwealth. The Committee were unwilling to proceed with the labor of preparing a bill and report upon the subject, unless with the distinct assurance, that, if the bill were acceptable to the Legislature, it would be accepted also by the proprietors. This is the first time, as your Committee believe, any sum named by former committees, has been assented to by the proprietors as likely to be accepted by them for a surrender of the bridge and franchise. And the Committee, under all the circumstances of the case, are not prepared to say the sum is unreasonably high, and trust the Legislature will agree with them in opinion; inasmuch as, by the provisions of the bill, those for whose accommodation the second bridge was built, and who now for the same reasons, greatly enhanced in force by new circumstances, ask for the opening of the old bridge, will bear the burden of paying for it, in the proportion of their necessities for using it.

The Committee are fully aware that "tolls are odious," especially to those, who are obliged to pay them. And inasmuch as those, who pay tolls are more numerous than those who receive them, they may with propriety be said to be unpopular. But it seems to your Committee that there can be no more just and equitable mode of supporting public highways than by a tax in one form or another upon those, who use them. If the public convenience and necessity eleven years ago required a second avenue between Boston and Charlestown, and if the travel in that direction has increased, as all admit, and some say fourfold; then it seems clear, that the petitioners for opening Charles River Bridge, have made out a case, which the Legislature, at least, will not now ques-

tion. And if that bridge is to be opened for the accommodation of the travel in that direction, then it is past the ingenuity of this Committee to devise any more just or equitable mode than by a toll upon those, who may have occasion to pass it. The Committee regret the necessity of the case, and if possible would avoid it, but they cannot perceive any peculiar hardship in it. The traveller, who approaches the city from almost every other point, pays a toll, and it would be difficult to assign a reason, why those who wish to approach it from Charlestown should be exempted from a common burden at the expense of the rest of the community.

It is but an act of justice to the petitioners for the opening of Charles River Bridge, to state, that many of them, and those two, who would most sensibly feel the imposition of tolls, avowed themselves perfectly willing to submit to the temporary evil for the sake of the greater ultimate good,—a second free avenue between Boston and Charlestown. If the community who will, from their position, have a large share of the tolls to pay, are willing to submit to the inconvenience for a time, for the ultimate advantages to accrue chiefly to themselves; or if that community are divided in opinion upon the question of expediency *to themselves* in this regard, it is not obvious to your Committee, why the Legislature should interpose any obstacles to their redeeming for their own use a second free avenue in the manner indicated by the bill herewith reported. It would seem to be a consummation devoutly to be wished, that those, at whose instance and for whose benefit the property of the proprietors of Charles River Bridge was invaded, should have what facilities the Legislature can afford, to redress, in some small degree and at this late time, the injury inflicted;



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and at the same time to carry out their original purpose of securing *two* avenues between Charlestown and Boston. Certainly it cannot be, that other sections of the Commonwealth will object to a mode so just in its principles—so equal in its operation in joining together the burdens and the benefits of the project,—and so sure to free the Commonwealth from this most perplexing, expensive, and troublesome controversy.

But the necessity of some prompt and efficient measures being adopted for opening Charles River Bridge at the present time, is greatly enhanced by the fact that the Warren Bridge is now in a dangerous condition, as represented by the agent in his communication to His Excellency the Governor. “The flooring gave way, last year,” says the agent, “in five different places, the timber composing it being entirely decayed.” And in his testimony before the Committee, the same officer stated that in some places he took up more than half the width of the bridge. It seems, to your Committee, that the Legislature, whose duty it is to provide for the *public safety*, no less than their convenience and necessity, should not allow this state of things to continue through another year. If serious accidents and loss of life and property should be avoided by the vigilance of the agent, it must be obvious that the travelling community will be greatly inconvenienced by the frequent repairs, that must necessarily be made. And moreover, the aggregate of these partial repairs, made at so great disadvantage, will soon equal the cost of a thorough repair at once, and the bridge will be left with a half decayed flooring at the end of the process. If the Charles River Bridge were at once repaired and made passable, and then the Warren Bridge thoroughly repaired in the manner indicated

and provided for in the bill, it seems to your Committee that the public would be great gainers in their facilities for passing, and the Commonwealth would be a great gainer in the diminished cost of the work.

If the course provided for in the bill, should be taken, and the Charles River Bridge be first repaired and opened for public travel, according to the prayer of the petitioners, it would nearly redeem itself by the tolls collected upon it, by the time the Warren Bridge could be repaired and again opened for use. But when the Warren Bridge shall have been thoroughly repaired, as the public *safety* and necessity, as well as public economy, most imperiously demand, the Warren Bridge Fund will be so essentially reduced, that it will be wholly inadequate to sustain the bridge in good repair and defray the expenses of superintendence, and care, and other incidental charges against it.

The Committee propose, therefore, to open that bridge also with a toll, to be added to the Warren Bridge Fund, in order to bring it up again to an amount which shall promise to keep it in repair. But, by the time the Warren Bridge will have accomplished this for itself, the Charles River Bridge will have redeemed itself, and be ready to become a *free bridge*, and unite cordially with its younger and more favored rival, in accommodating the public travel.

It seems to your Committee, that this is an entirely practicable and easy method of settling the whole matter amicably, and upon those principles of justice and equity, which should characterize every enlightened government, and especially the government of a free and intelligent people.

That class of the petitioners, who pray that Warren

Bridge may be kept free from tolls, and that Warren Bridge Fund may be applied exclusively to the maintenance and support of that bridge, feel great reluctance to have a toll imposed upon that bridge for ever so short a time, or for any purpose, even rendering the fund adequate to its permanent support. The Committee regret the necessities of the case; but they cannot perceive how a toll can be avoided, except by one of two alternatives;—either the Commonwealth must assume one or both the bridges, as the public *safety* and necessity requires, and maintain and support them out of the public treasury, or that being empty, by a tax upon the polls and estates of the people of the whole State;—or the city of Boston and the town of Charlestown, between which they lie, must assume and maintain them, as the people of other sections of the Commonwealth maintain the bridges in their neighborhoods. The first of these alternatives would be so obviously unequal upon the people of other sections of the Commonwealth, who are already heavily burdened with taxes for the support of the roads and bridges within their own municipalities, and many of whom now pay tolls on other bridges leading into the city in their direction, and who, moreover, have little or no use for the bridges in question, that the Committee did not give it a moment's consideration.

But the other alternative, that is, the assumption of the maintenance and support of these bridges by the city of Boston and town of Charlestown, is so just in principle, so reasonable, and so accordant with what is done by other towns all over the Commonwealth, and, moreover, as your Committee believe, so much for the interest of the city and town in question, that they have provided in the bill, that whenever these municipalities will assume the sup-

port of the bridges, they shall thenceforth become free. And to give the assurance, that the Legislature have no design or intention whatever of continuing a toll upon either of the bridges a moment longer than is necessary to make and keep them free, and that they have no purpose of diverting any portion of the tolls collected on those bridges to any other object, the bill provides, that whenever the city or town will assume the bridges, they may receive also all the tolls and funds which may have been collected upon both bridges, after defraying the expenses of their purchase and repairs.

If the bill, which the Committee have prepared, should meet the approbation of the Legislature, and become a law, one of the most perplexing standing topics of legislation will be settled and disposed of forever,—something acceptable, if not entirely satisfactory, will have been done to indemnify the individuals, who have suffered in their estates by previous acts of legislation ;—and the populous and wealthy communities of Boston and Charlestown will have the opportunity to have *free* communication between themselves whenever they are disposed so to do ;—and at any rate, the long-deferred hopes and fervent prayers of the citizens of Charlestown, for two free avenues to Boston, will be realized to them, probably within the short period of a year or eighteen months, and the Legislature will be freed from any further trouble with the bridges between Boston and Charlestown.

By order of the Committee,

JAMES G. CARTER, *Chairman.*

**Commonwealth of Massachusetts.**

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**In the year One Thousand Eight Hundred and Thirty-Nine.**

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**AN ACT**

**Relating to Charles River Bridge and Warren Bridge.**

**BE** *it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :*

1    **SEC. 1.**    The treasurer of the Commonwealth is  
2 hereby authorized and directed to issue scrip or cer-  
3 tificates of debt in the name and in behalf of the  
4 Commonwealth, for the sum of fifty thousand dollars,  
5 in sums of one thousand dollars each, payable to the  
6 bearer, and bearing an interest of five per cent. per  
7 annum, payable semi-annually at the office of the  
8 treasurer of the Commonwealth, on the first days of  
9 April and October ; and said scrip or certificates of

10 debt shall be redeemable at the pleasure of the Com-  
11 monwealth after two years. And the treasurer of the  
12 Commonwealth shall deliver said scrip or certificates  
13 of debt to the treasurer of the proprietors of Charles  
14 River Bridge, to be divided, or the proceeds thereof  
15 to be divided, among said proprietors, according to  
16 the number of shares they may respectively hold,  
17 whenever said proprietors shall deliver to the treasurer  
18 of the Commonwealth aforesaid, a good and sufficient  
19 instrument, in form to be approved by the attorney  
20 general, surrendering to the Commonwealth all their  
21 right and title in and to said Charles River Bridge,—  
22 to the materials of which it is constructed, and the  
23 franchise or right to take tolls as heretofore granted to  
24 them: *provided*, said proprietors shall be released  
25 from all liabilities and obligations imposed by their  
26 charter and acts relating thereto; and be allowed to  
27 have the powers of a corporation for the purpose of  
28 settling and closing their concerns as prescribed in the  
29 forty-fourth chapter of the Revised Statutes.

1 SEC. 2. For the purpose of redeeming the scrip or  
2 certificates of debt provided for in the above section;  
3 and for the further purpose of accumulating a fund  
4 sufficient to repair and to keep in repair the Charles  
5 River Bridge as a free public avenue, there shall be  
6 levied and collected the same rates of toll upon the  
7 said bridge as heretofore been granted and received  
8 by the proprietors thereof; and the same shall be paid  
9 into the treasury of the Commonwealth, according to  
10 the provisions of this act.

1 SEC. 3. The Governor, with the advice and con-  
2 sent of the Council, is hereby authorized to appoint  
3 an agent to repair as soon as may be consistently with

## 22 WARREN & CHARLES R. BRIDGES. [March,

4 good economy, and to superintend said bridge, with  
5 full power on the part of said agent, when said bridge  
6 is ready to be opened for public travel, to appoint  
7 toll-gatherers, and all other suitable persons from  
8 time to time to collect and receive said tolls, and to  
9 do all other necessary things in regard to said bridge.  
10 And said agent shall render to the Governor and  
11 Council a quarterly account of all receipts of toll at  
12 said bridge, and of all other receipts in behalf and on  
13 account of said bridge, and of all expenditures in re-  
14 lation thereto, and shall at the same time pay over to  
15 the treasurer of the Commonwealth the balance of  
16 said quarterly accounts remaining in his hands. And  
17 said agent on the second Wednesday of January in  
18 each year, shall make a report to the Legislature of  
19 his doings as such agent, to which report shall be  
20 added an account of all his receipts and expenditures  
21 during the year preceding. And the Governor is  
22 authorized to draw his warrants on the treasury in  
23 favor of the agent aforesaid, from time to time, as the  
24 same may be needed to carry on the repairs of said  
25 Charles River Bridge, *provided*, the sums so drawn  
26 from the treasury for the purpose aforesaid, shall not  
27 in the aggregate exceed ten thousand dollars.

1 SEC. 4. The Governor, with the advice and con-  
2 sent of the Council, shall demand and receive from  
3 such agent a bond with sureties in such sum as they  
4 shall deem sufficient, for the faithful performance of  
5 his duties in the discharge of his office, and shall also  
6 fix the annual compensation, to be allowed to such  
7 agent out of said tolls. And said agent shall be re-  
8 movable at the pleasure of the Governor, by and with  
9 the advice and consent of the Council.



1 SEC. 5. As soon as said Charles River Bridge  
2 shall be repaired and opened for public travel in man-  
3 ner aforesaid, the agent of Warren Bridge shall pro-  
4 ceed forthwith to repair, in such thorough and sub-  
5 stantial manner as shall be prescribed by three com-  
6 missioners, to be appointed for that purpose by the  
7 Governor, with the advice and consent of the Council.  
8 And the expense of repairing said Warren Bridge,  
9 and of the commissioners aforesaid, shall be paid from  
10 the "Warren Bridge Fund," and the Governor is  
11 authorized to draw his warrants therefor.

1 SEC. 6. When Warren Bridge shall be repaired in  
2 manner aforesaid, and is again re-opened for public  
3 travel, the same rates of toll shall be levied and col-  
4 lected on said bridge, as were granted to and received  
5 by the proprietors thereof, according to their act of  
6 incorporation. And the agent of Warren Bridge is  
7 hereby authorized to appoint toll-gatherers, and all  
8 other suitable persons, from time to time, to collect  
9 and receive said tolls, and to do all other necessary  
10 things in regard to said bridge. And said agent of  
11 Warren Bridge shall render to the Governor and  
12 Council a quarterly account of his receipts and ex-  
13 penditures on account of said bridge, and an annual  
14 report to the Legislature, similar to those provided  
15 for in relation to Charles River Bridge, in the third  
16 section of this act.

1 SEC. 7. All tolls collected on the Warren Bridge,  
2 and all monies received on account of said bridge,  
3 after defraying the expenses of the collection thereof,  
4 and the necessary repairs on said bridge, and all inci-  
5 dental charges on its account, shall be added to the  
6 "Warren Bridge Fund."

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1 SEC. 8. The city of Boston and the town of  
2 Charlestown, or either of them, are hereby author-  
3 ized to assume the redemption of the scrip provided  
4 for in the first section of this act, and the maintenance  
5 and support of said Charles River Bridge and War-  
6 ren Bridge in such proportions as they may mutually  
7 agree upon, within the limitations and restrictions  
8 hereinafter provided. Whenever they or either of  
9 them shall determine so to do; and said city and  
10 town or either of them are authorized to make and  
11 deliver a bond to the treasurer of the Commonwealth,  
12 in form to be approved by the attorney general, bind-  
13 ing said city and town or either of them, as the case  
14 may be, to indemnify and save harmless the Common-  
15 wealth from all liability on account of the scrip, afore-  
16 said, and to keep and maintain both of said bridges  
17 in good repair as convenient, free, public avenues  
18 forever. And whenever such bond conditioned and  
19 approved as aforesaid shall be delivered to the treas-  
20 urer of the Commonwealth, the whole of the Warren  
21 Bridge Fund, which has been heretofore accumulated  
22 or may hereafter be accumulated by the provisions of  
23 this act, and all tolls which may have been collected  
24 upon Charles River Bridge, according to the provi-  
25 sions of this act, after defraying the expenses of the  
26 repairs and superintendence and all other incidental  
27 expenses of conducting and managing both of said  
28 bridges and after the redemption of the scrip afore-  
29 said, with the interest thereon; shall be paid over on  
30 demand to said city of Boston and the town of  
31 Charlestown or either of them in such proportions as  
32 they shall mutually agree upon, and the Governor is  
33 authorized to draw his warrants therefor; *provided,*

34 that whenever the tolls collected upon Charles River  
35 Bridge shall be sufficient to reimburse the Common-  
36 wealth for all the expenses of the repairs authorized  
37 to be made upon said bridge by this act, and all the  
38 current and incidental expenses of its superintendence  
39 and management, and for all sums paid or to be paid  
40 by the Commonwealth for the redemption of the  
41 scrip aforesaid, with the interest thereon, then the  
42 tolls on both said bridges shall cease.

1     SEC. 9. This act shall take effect from and after  
2 its passage.



*To the Honorable Senate and the House of Representatives in General Court assembled :*

The Proprietors of Charles River Bridge ask leave to present the following

### MEMORIAL:

During the present session of the Legislature various petitions have been presented to your honorable body, praying that Charles River Bridge may be re-opened to the public. The proprietors of that bridge, have as yet, taken no part in the question either as petitioners or remonstrants, but, as an order of notice has been served upon them to appear as one of the parties in interest ; they think it incumbent upon them once more to vindicate their conduct, and set forth their claim.

Your memorialists have never questioned the power or the right of the Legislature to make use of their property for the good of the public. All they have asked is, that they may have the benefit of that provision of the Constitution of Massachusetts which declares, " That whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor."

This subject in its various stages, has been so long before the Legislature, that it cannot be necessary to enter

## 28 WARREN & CHARLES R. BRIDGES. [March,

at length into the history of it. Your memorialists ask leave, however briefly, to recapitulate the leading facts in their case.

In 1785, the General Court, for good considerations, gave the Proprietors of Charles River Bridge, a solemn charter for forty years. In 1792, for equally good considerations, they made to them another solemn grant, by which they extended their charter for thirty years longer. By these charters the proprietors were entitled to certain fixed rates of toll through the whole period of seventy years, as a compensation for the cost of building the bridge and keeping it in repair, and for the encouragement of enterprise. Yet the Legislature of Massachusetts, first by the act creating the Warren Bridge, secondly by those acts which put a stop to the collection of tolls from persons passing over it, have made a free bridge by the side of Charles River Bridge, accommodating exactly the same line of travel, and of course, depriving Charles River Bridge of all tolls. When these proceedings began, the proprietors of the 150 shares in Charles River Bridge, having bought them in the market, or having received them in the partition of estates, or in the payment of debts, had a property in them equal to two thousand dollars a share. Twenty years of the charter remained unexpired when the Legislature of the Commonwealth thus took away the whole value of the property. By the several acts the whole income of the bridge was annihilated, and several of the proprietors who had no other property, at once reduced to indigence.

It has never been pretended that your memorialists failed to perform the duties imposed upon them by the charter. On the contrary, it will appear from their various memorials while the question of chartering the

Warren Bridge was pending, that they offered, should the Legislature decide that the public convenience required it, to widen their bridge, to make a circular draw, or a spar-bridge, or even to build a second bridge at their own expense.

So careful have they been that nothing should be wanting on their part, that they continued to perform their obligations under the charter more than a year after the Warren Bridge was made free. The experiment clearly proved that the tolls were insufficient even to defray the current expenses of the bridge. Notwithstanding that the annuity to Harvard College for that year was unpaid, that both the treasurer and superintendent were dispensed with, that only one toll-gatherer was retained, and many important repairs neglected, the income fell far short of the outlay.

On the 15th day of March, 1837, the proprietors, by a memorial, laid these facts before the Legislature, informing them that unless some step was taken on their part, the bridge must be closed. The Legislature rose about the middle of April, without acting on the subject, the bridge was closed a few days after, and thus has remained until this time.

Such is a brief statement of the case of your memorialists. To them it seems impossible, that their claim to the equitable consideration of the Commonwealth can be questioned. If charters are inviolable ; if they are not repealable at the will of the Legislature ; if property invested on the faith of them be not confiscable at the pleasure of the government ; if private property cannot be taken for public uses, real or pretended, without making compensation to the owners ; then must the proprietors of this property be remunerated, before the pub-



lic can again enjoy the use of the bridge erected by them under a solemn pledge of the public faith.

That they have such equitable claim under the Constitution of Massachusetts, is expressly admitted in the report of a special committee of the Legislature, to whom the subject was referred at the last session.

Your memorialists can only close as they began, by saying, that they are ready to come into any reasonable arrangement for opening their bridge, and that while they shall deem it their duty constantly to exercise their constitutional right of petition until their claim is admitted, they sincerely hope that the present session of the General Court will not close, without bringing to a termination this most unpleasant, and to them ruinous controversy.

All which is respectfully submitted, by

P. C. BROOKS,  
WARREN DUTTON,  
C. R. CODMAN,

*A Committee of the Proprietors.*

Boston, Feb. 25, 1839.

## ARTICLE XXV.

Nothing herein shall be construed to

prevent the Board of Directors from

## ARTICLE XXVI.

Nothing herein shall be construed to

prevent the Board of Directors from

Nothing herein shall be construed to

Nothing herein shall be construed to

Nothing herein shall be construed to



# SENATE....No. 57.

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[Reported by the Committee on Roads and Bridges.]

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## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Thirty-Nine.

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## AN ACT

To Incorporate the "Proprietors of the Northfield Bridge."

*BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :*

1    SEC. 1.    That James White, Richard Cotton, Jon-  
2    athan H. Blake, Samuel C. Allen, Jr., Elijah Matton,  
3    and Wm. G. Woodward, their associates, successors,  
4    and assigns, are hereby made a corporation by the  
5    name of "The Proprietors of Northfield Bridge,"  
6    with all the powers and privileges, and subject to  
7    all the duties and liabilities conferred and imposed  
8    upon corporations by the forty-fourth chapter of the  
9    Revised Statutes.

1    SEC. 2. The said Proprietors are hereby author-  
2 ized and empowered to erect a bridge over Connecti-  
3 cut river, in the town of Northfield in the county of  
4 Franklin, at any convenient place between Prindle's  
5 Ferry and Tiffany's Ferry, so called ; where the said  
6 town of Northfield has a road or reserved land run-  
7 ning westerly to the river, through Great Meadow :  
8 or at any other point between the said ferries, when  
9 the inhabitants of said town of Northfield at a legal  
10 meeting holden for that purpose, shall consent thereto.  
11 And the said bridge shall be well built of suitable  
12 materials, at least twenty-six feet wide, and covered  
13 with planks, with sufficient rails on each side for the  
14 safety of passengers travelling thereon, and shall be  
15 kept in good repair at all times.

1    SEC. 3. A toll is hereby granted to the said pro-  
2 prietors, and is established at the following rates,  
3 viz. For each foot passenger, two cents ; for each  
4 horse and rider, six cents ; for each gig, sulky, or  
5 wagon, drawn by one horse, twelve cents and a half,  
6 and for each addition horse, four cents ; for each,  
7 chaise, carryall, or covered buggy, sixteen cents,  
8 and for each additional horse, four cents ; for each  
9 coach, charriot or phæton, drawn by two horses,  
10 thirty-three cents, and for each additional horse, six  
11 cents ; for each cart, sled, or other carriage of bur-  
12 den, drawn by one beast, ten cents ; if drawn by two  
13 beasts, sixteen cents, and for each additional beast  
14 four cents ; for each baggage-wagon used in trans-  
15 porting merchandise, drawn by two beasts, twenty  
16 cents, and for each additional beast, four cents ; for  
17 each horse without a rider, four cents ; for neat cattle,  
18 asses, and mules, each, three cents ; for sheep and

19 swine, each, one cent ; and one person, and no more,  
20 to each team, shall pass free from toll. And all per-  
21 sons who shall have occasion to pass the said bridge  
22 to perform military duty, and the inhabitants of the  
23 town of Northfield, when passing the said Bridge, to  
24 attend town-meetings, or public worship at their  
25 usual place for the same, shall pass, with their neces-  
26 sary horses and carriages, free from toll.

1 SEC. 4. The said tolls shall commence on the day  
2 of opening the said bridge, and shall continue for the  
3 term of fifty years ; and at the place of receiving the  
4 said tolls there shall be constantly exposed to view,  
5 a sign-board, with the said rates of toll fairly and  
6 legibly printed thereon.

1 SEC. 5. The said corporation, at the time of open-  
2 ing the said bridge, shall cause a true account of the  
3 expenses of building the same, and also at the end of  
4 every three years thereafter, a true account of all re-  
5 ceipts and disbursements on account of the same, to  
6 be returned into the office of the Secretary of the  
7 Commonwealth.

1 SEC. 6. The said proprietors may, if they see  
2 cause, commute the said rates of toll with any person  
3 or persons, by taking of him or them a certain less  
4 sum, payable at any stated periods, instead of the  
5 tolls aforesaid ; or by taking of all persons less rates  
6 of toll than as before specified, the said proprietors  
7 first giving public notice of their intention so to do, by  
8 publishing the same three weeks successively in any  
9 newspaper printed in the said county of Franklin, or,  
10 if there be none such, then in some newspaper printed  
11 in the county of Worcester or Hampshire. And the  
12 said corporation may hold land to an amount not ex-

13 ceeding two thousand dollars, and may convey the  
14 same.

1 SEC. 7. *Provided, however,* that this act shall not  
2 take effect until the rights and powers of the proprie-  
3 tors of the Northfield Bridge, as granted in an act  
4 passed the ninth day of March, eighteen hundred and  
5 eight, entitled, "An Act to incorporate a number of  
6 persons, for the purpose of building a bridge over  
7 Connecticut river, between Prindle's Ferry and Mill  
8 Brook, in the town of Northfield, in the county of  
9 Hampshire"; and also an act passed the eighteenth  
10 day of June, eighteen hundred and twelve, entitled,  
11 an act in addition to an act, entitled, "An Act to  
12 incorporate a number of persons, for the purpose of  
13 building a bridge over Connecticut river, between  
14 Prindle's Ferry and Mill Brook, in the town of North-  
15 field, in the county of Hampshire"; shall be surren-  
16 dered, annulled, or otherwise extinguished, or trans-  
17 ferred to the corporation by this act created. *And,*  
18 *provided, also,* that if the said proprietors shall neg-  
19 lect, for the space of six years from the passing of  
20 this act, to build and finish the said bridge, then this  
21 act shall be of no effect.



## SENATE....No. 58.

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### Commonwealth of Massachusetts.

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In SENATE, March 21, 1839.

The Committee, to whom was referred the petition of the Proprietors of the Salem and Danvers Aqueduct Corporation, for leave to extend their works; and to whom was also referred the remonstrances of Eben. Sutton, and of Jonathan Shove and others, against the prayer of said petition, have duly considered the subject, respectfully report the accompanying bill.

SAMUEL T. ARMSTRONG,

*Chairman.*



## Commonwealth of Massachusetts.

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In the year One Thousand Eight Hundred and Thirty-Nine.

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### AN ACT

In addition to an Act to incorporate William Gray, junior and others for the purpose of bringing Fresh Water into the towns of Salem and Danvers by subterraneous pipes.

**BE** *it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :*

1    SEC. 1. The Proprietors of the Salem and Dan-  
 2    vers Aqueduct Corporation, are hereby authorized to  
 3    take from their own land in said Salem, and conduct  
 4    by subterraneous pipes into Salem and Danvers, a full  
 5    and constant supply of water for the inhabitants of  
 6    said Salem and Danvers, and for this purpose to main-

#### 4 SALEM & DANVERS AQUEDUCT CORP. [March,

7 tain any pipes already laid down by said corporation,  
8 and to construct and lay down any other pipes of any  
9 materials and dimensions, in addition to their present  
10 works, and in any direction, and under any highways,  
11 streets, private ways, or lands whatever, subject to  
12 the provisions of the act of which this is in addition,  
13 and subject to the provisions hereinafter contained.  
14 *Provided, however,* That nothing in this act contained  
15 shall operate to prevent, bar, or affect any claim for  
16 damages, or other legal right whatever, that any per-  
17 son or persons now have for any thing heretofore  
18 done by said corporation.

1 SEC. 2. If any person or corporation suffer dam-  
2 age by the taking and conducting said water in man-  
3 ner aforesaid, and shall not agree with said Aqueduct  
4 Corporation on the indemnification to be paid there-  
5 for, such person or corporation may within one year  
6 file a petition for indemnity in the supreme judicial  
7 court within said county of Essex, before or during  
8 any term thereof, and after fourteen days' notice,  
9 which shall be given to said Aqueduct Corporation,  
10 by leaving an attested copy of said petition with the  
11 clerk of said Aqueduct Corporation, the court may  
12 proceed to the hearing of the petitioner upon the  
13 appearance or default of said Aqueduct Corporation;  
14 and the court may appoint three commissioners, who  
15 shall be disinterested freeholders and inhabitants of  
16 the Commonwealth, to determine the damages, which  
17 the said petitioner may have sustained by reason of  
18 the taking and conducting said water as aforesaid;  
19 and the said commissioners shall forthwith give notice  
20 to both parties to appear, if they see fit, for a hearing  
21 before them; and the said commissioners shall first

22 inquire whether any damage has been sustained by  
23 said petitioner by the cause aforesaid, and, if any,  
24 they shall estimate the same; and the award of said  
25 commissioners, or of the major part of them, shall be  
26 returned by said commissioners as soon as may be  
27 into the said court; and upon the acceptance thereof,  
28 judgment shall be rendered for the party prevailing  
29 with costs: *Provided always*, That if either party  
30 shall be dissatisfied with such award, such party may  
31 apply to the supreme judicial court, at any term there-  
32 of holden within the county of Essex next after the  
33 return of said award for a trial by jury, and the same  
34 shall thereupon be tried at the bar of said court; and  
35 if the party applying for a jury as aforesaid, shall not  
36 obtain, in case it shall be the original petitioner or  
37 complainant, an increase of damages, or in case it  
38 shall be the original defendant, a decrease of damages  
39 awarded by the said commissioners, such party shall  
40 pay reasonable costs of such trial, but otherwise may  
41 recover costs; and upon any judgment rendered upon  
42 any such verdict, the said court may issue execution  
43 accordingly.

1 SEC. 3. The said Aqueduct Corporation may  
2 create any number of new shares in their capital  
3 stock, which may be necessary to meet the expense  
4 of extending and improving their works to obtain the  
5 supply of water aforesaid.

1 SEC. 4. The said Aqueduct Corporation shall  
2 hereafter be subject to the provisions of the ninth  
3 section of the fortieth chapter of the Revised Statutes.









SENATE.....

.....No. 59.

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REPORT AND BILL

CONCERNING THE

CITY BANK, AT LOWELL.

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**Commonwealth of Massachusetts.**

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IN SENATE, Jan. 21, 1839.

*Ordered*, That the Committee on Banks and Banking be instructed, to inquire into the expediency of repealing the charter of the City Bank, at Lowell; also, the charter of the Farmers and Mechanics Bank, at South Adams.

Sent down for concurrence.

CHARLES CALHOUN, *Clerk*.

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HOUSE OF REPRESENTATIVES, Jan. 21, 1839.

Concurred.

L. S. CUSHING, *Clerk*.

**Commonwealth of Massachusetts.**

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IN SENATE, Feb. 19, 1839.

*Ordered*, That Messrs. ARMSTRONG and BREED, with such as the House may join, be a Committee to examine into the doings of the City Bank in Lowell, and for that purpose to summon the President, Directors, and Company of said Bank, to appear, and if, upon such examination, the Committee shall judge proper, to require the said President, Directors, and Company, to show cause why the charter of said Bank should not be declared forfeited, according to the provisions of the 36th chapter of the Revised Statutes, and that said Committee be authorized to require the attendance of the Attorney General, on behalf of the Commonwealth.

Sent down for concurrence.

CHARLES CALHOUN, *Clerk*.

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HOUSE OF REPRESENTATIVES, Feb. 20, 1839.

Concurred : and Messrs. WILLIAMS, of *Northampton*,  
WESTON, of *Duxbury*,  
SHAW, of *Boston*, are joined.

L. S. CUSHING, *Clerk*.

**Commonwealth of Massachusetts.**

The Special Joint Committee under the foregoing order have attended to the subject referred to them, and respectfully submit the following

**R E P O R T.**

In pursuance of the duty assigned to them by the foregoing order, the Committee notified the president, directors, and company of the City Bank, in Lowell, to attend in the Senate chamber, on the thirteenth day of March, at three o'clock, P. M., at which time and place, the Committee met, but the said president, directors, and company did not appear. The Committee then proceeded to examine certain persons under oath, as to the affairs of said bank, and thereupon, adjudged and determined to summon the said president, directors, and company to appear at the same place on the twentieth day of said March, at half past three o'clock, P. M., to shew cause, if any they had, why the charter of said bank should not be declared forfeited. The Committee assembled at that time and place, but said president, directors, and company did not appear.

The Committee beg leave to refer to so much of the report of the bank commissioners, made to the Legislature at its present session, as relates to said City Bank, at Lowell, and to have the same considered as part of this report; and the Committee find that the several allegations therein contained are true.

For the gross irregularities therein set forth, the Committee find that the charter of said bank ought to be repealed, and they report a bill for that purpose. In the proceedings by the Committee, they required the attendance of the Attorney General on the part of the Commonwealth, who attended accordingly.

For the Committee,

SAMUEL T. ARMSTRONG, *Chairman.*

## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Thirty-Nine.

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### AN ACT

To Repeal the Charter of the City Bank in Lowell.

**BE** it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :

1    SEC. 1.    An act entitled an act to incorporate the  
2 City Bank in Lowell, passed on the thirty-first day of  
3 March, in the year eighteen hundred and thirty-six,  
4 is hereby repealed : *Provided*, that nothing in this  
5 act contained, shall be so construed as to release or  
6 absolve the said corporation, or any director or stock-  
7 holder thereof from any liability created by any pro-  
8 vision of the act hereby repealed.

1    SEC. 2.    This act shall take effect from and after  
2 its passage.





SENATE.....

.....No. 60

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REPORT AND BILL

CONCERNING THE

FARMERS AND MECHANICS BANK,

AT

SOUTH ADAMS.

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## Commonwealth of Massachusetts.

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IN SENATE, Feb. 19, 1839.

*Ordered*, That the Special Joint Committee appointed to examine into the doings of the City Bank, in Lowell, also examine into the doings of the Farmers and Mechanics Bank, in Adams South Village, and for that purpose summon the President, Directors and Company of said Bank to appear—and if upon such examination the Committee shall judge proper, require the said President, Directors and Company to show cause why the charter of said Bank should not be declared forfeited, according to the provisions of the 36th chapter of the Revised Statutes; and that said Committee be authorized to require the attendance of the Attorney General on behalf of the Commonwealth.

Sent down for concurrence.

CHA'S CALHOUN, *Clerk*.

HOUSE OF REPRESENTATIVES, Feb. 20 1839.

Concurred.

L. S. CUSHING, *Clerk*.



**Commonwealth of Massachusetts.**

The Special Joint Committee appointed by the foregoing Order, respectfully

**R E P O R T :**

That under the authority given to them by the order of the two Houses, they required the attendance of the attorney general on behalf of the Commonwealth, and availed themselves of the services of that officer in prosecuting their inquiries, and in preparing such papers as the investigation which they were ordered to make required.

The Committee first caused the president, directors and company of the Farmers Bank, in Adams South Village, to be summoned to appear before them in the Senate Chamber, on the 13th day of the present month, on which day the Committee met, and the bank, by Daniel Lap-  
ham, its agent, and Rufus Choate, Esq. its attorney and solicitor, also appeared. The Committee then proceeded to examine Julius Rockwell and Jonathan Shove, Esqrs., two of the Bank Commissioners under oath, as to the circumstances and condition of the bank, and the manner in which it commenced its operations. The bank produced no testimony. The Committee thereupon, after

## 6 FARMERS & MECHANICS BANK. [March,

hearing the counsel for the bank, and the attorney general on the part of the Commonwealth, judged and determined that it was proper to require the said president, directors and company to show cause why the charter of said bank should not be declared forfeited, according to the provisions of the 36th chapter of the Revised Statutes, and they appointed the 20th day of March, at the Senate Chamber, at 3 o'clock P. M., as the time and place, for that purpose. The agent and counsel of the bank being present, agreed to take notice, and waived any other form thereof.

At the time and place above-mentioned, the Committee again met, and were attended by the agent and attorney of the bank, and by the attorney general for the Commonwealth. The said agent and attorney were then informed that the Committee were ready to receive any evidence to explain or qualify the statements made at the former meeting, by the witnesses then adduced, viz: J. Rockwell and J. Shove, Esqrs., and they were then required to show cause why the charter of said bank should not be declared forfeited. The said agent and attorney for the bank declined to adduce any evidence, but presented a written protest, which is hereunto annexed.

The Committee find that the capital stock of said bank was not paid in within one year and six months from the passing of the act of incorporation ;

That the capital stock of said bank was never paid, and was never by the stockholders intended to be paid, in gold or silver, but on the contrary, each subscriber made his own note payable on demand to his own order, and having indorsed it passed it over to the cashier in payment of his shares ;

That commissioners appointed by the governor to ex-

amine the specie of said bank were summoned to meet at South Adams, on the 11th October, 1837. There they found and examined fifty thousand dollars, the amount required by law ; and five persons acting as directors made oath in common form, that the said specie had been paid in by the stockholders, on account of their shares, and was to remain as a part of the capital of the bank. But this Committee find, that said specie had not been so paid, and was not intended to remain, and did not remain, as a part of the capital of the bank ; but that the whole transaction on the part of the bank was colorable and deceptive ; —

That no annual meeting for the choice of directors has ever been holden.

These matters, in the opinion of this Committee, require that the charter should be annulled.

No attempt is made by the respondents to deny or explain these several matters, but they place their objections to a repeal of the charter on the grounds stated in their protest.

Upon this protest the Committee would remark, that the first reason assigned, viz. that the Legislature has no constitutional power to repeal a bank charter, has been repeatedly considered, and as often overruled by the Legislature itself. No other department of the government has impugned this decision. It is at present to be taken as the declared law of the land. Whatever doubts may at any time have existed ought now to yield to this exposition of the legislative authority. The Committee have neither the power or the inclination to sustain the objection of the bank under the present circumstances of the case.

As to the second reason assigned in the protest, the



## 8 FARMERS & MECHANICS BANK. [Mar. '39.]

Committee are of opinion that it proceeds on a mistake of the fact; but, that the Legislature may have full means of ascertaining the truth, they have presented a detail of their proceedings. The Committee do not believe that it was the intention of the Legislature, that they should make a personal visit to the bank in Adams South Village.

The third reason in the protest is, that the constitutional power of the Legislature in the premises, is now in litigation, in *another case*, in the supreme judicial court. Of this fact, this Committee have not that accurate information which would be desirable, if such litigation could, under any circumstances, bear on the present inquiry. But the Committee are of opinion, that with such other case, this subject has no necessary connexion.

The fourth reason assigns the pendency of a bill in chancery before the supreme court, brought by the bank commissioners against this corporation, but as that was known to the Legislature by the report of said commissioners previous to the order under which this Committee is acting, it cannot be considered as in any way, in the judgment of the Legislature impeding the performance of the duty assigned to them.

On consideration of the whole subject, the Committee report a bill to repeal the charter of said bank.

For the Committee,

SAM'L T. ARMSTRONG, *Chairman.*

## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Thirty-Nine.

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## AN ACT

To Repeal the Charter of the Farmers and Mechanics Bank.

**BE** *it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows :*

1    SEC. 1. An act, entitled “an act to incorporate  
2 the Farmers and Mechanics Bank,” passed April  
3 first, in the year one thousand eight hundred and  
4 thirty-six, is hereby repealed : *provided*, that nothing  
5 in this act contained shall be so construed as to re-  
6 lease or absolve the said corporation, or any director

**10 FARMERS & MECHANICS BANK. [March,**

**7 or stockholder thereof, from any liability created by  
8 any provisions of the act hereby repealed.**

**1 SEC. 2. This act shall take effect from and after  
2 its passage.**

## **Commonwealth of Massachusetts.**

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[Before Joint Committee of the Legislature.]

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The President, Directors and Company of the Farmers and Mechanics Bank, at South Adams, respectfully protest against a repeal of their charter by the Legislature, and assign as the grounds thereof,—

1st. That the Legislature has not the constitutional competence and power to repeal it.

2. That no committee of the Legislature has examined, or made an attempt to examine into the doings of the said bank, within the meaning of the 40th section of the 36th chapter of the Revised Statutes.

3. That the question of the constitutional power of the Legislature to repeal a charter, under the exact circumstances in which this charter is situated, is now pending before the supreme judicial court, has been solemnly argued, and is held under advisement.

4. That a bill in chancery has been filed, and is pending before the supreme judicial court, on the late act for

**12 FARMERS & MECHANICS BANK. [Mar. '39.**

the appointment of bank commissioners, by which the charter of the bank may be vacated—if by law it ought to be—that solemn argument has been had on it; and that the same is now held under advisement.

*President, Directors and Company of the Farmers  
and Mechanics Bank at South Adams,*

**By DANIEL P. LAPHAM, and by  
R. CHOATE, *their Att'y.***

**20 March, 1839.**

**SENATE....No. 61.**

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**Commonwealth of Massachusetts.**

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**SENATE, Feb. 9, 1839.**

*Ordered*, That the Committee on the Judiciary be instructed to inquire into the expediency of regulating, by statute, the negotiability of Promissory Notes payable on demand.

**Attest,**

**CHARLES CALHOUN, *Clerk.***

**Commonwealth of Massachusetts.**

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SENATE, March 26, 1839.

The Committee on the Judiciary, who were directed, by an order of Feb. 9, to inquire into the expediency of regulating, by statute, the negotiability of Promissory Notes payable on demand, report the accompanying bill.

For the Committee,

THOS. KINNICUTT.

## Commonwealth of Massachusetts.

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In the year of our Lord One Thousand Eight Hundred  
and Thirty-nine.

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### AN ACT

Concerning Notes payable on demand.

**BE** it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :

1    SEC. 1. In any action brought upon a promissory  
2 note payable on demand, made after this act shall  
3 go into operation, by an endorsee against the promis-  
4 sor, any matter shall be deemed a legal defence, and  
5 may be given in evidence accordingly, which would  
6 be a legal defence to a suit on the same note, if  
7 brought by the promisee.

1    SEC. 2. On any promissory note payable on de-  
2 mand, made after this act shall go into operation, a  
3 demand, made at the expiration of sixty days from



4 the date thereof, without grace, or at any time within  
5 that term, shall be deemed to be made within a rea-  
6 sonable time; and any act, neglect, or other thing  
7 which, by the rules of law, and the customs of mer-  
8 chants, is deemed equivalent to a presentment and  
9 demand, on a note payable at a fixed time, or which  
10 would dispense with such presentment and demand,  
11 if it shall occur at or within the said term of sixty  
12 days, shall be deemed to be a dishonor thereof, and  
13 shall authorize the holder of such note to give notice  
14 of the dishonor thereof to the endorser, as upon a  
15 presentment to the promisor and his neglect or refu-  
16 sal to pay the same. And no presentment of such  
17 note to the promisor, and demand of payment thereof,  
18 shall be deemed to be made within a reasonable time,  
19 so as to charge the endorser thereof, unless made on  
20 or before the last day of said term of sixty days.

1 SEC. 3. Upon all promissory notes payable on  
2 demand, made after this act shall go into operation,  
3 the several endorsers thereof shall be liable, upon due  
4 and seasonable notice, given according to the rules of  
5 law and the customs of merchants, of the dishonor of  
6 such notes, in the same manner and to the same effect  
7 as upon the dishonor of promissory notes payable at  
8 a fixed time, and not otherwise.

**SENATE....No. 62.**

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**Commonwealth of Massachusetts.**

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**IN SENATE, March 11, 1839.**

*Ordered*, That the Committee on the Judiciary consider the expediency of making any alterations of the law in relation to the taking of depositions to perpetuate evidence.

Attest,

**CHARLES CALHOUN, Clerk.**

**Commonwealth of Massachusetts.**

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IN SENATE, March 26, 1839.

The Committee on the Judiciary who were instructed, by the foregoing order, to consider the expediency of making any alterations of the law in relation to the taking of depositions to perpetuate evidence, have considered the same, and report the accompanying bill.

GEO. MOREY,

*For the Committee.*

## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Thirty-Nine.

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### AN ACT

Concerning the taking of Depositions to Perpetuate Testimony.

**BE** *it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows :*

1    SEC. 1. When any person shall be desirous to per-  
2    petuate the testimony of any witness, he shall make  
3    a statement or petition in writing, in the manner pro-  
4    vided in the thirty-fourth section of the ninety-fourth  
5    chapter of the Revised Statutes, and shall deliver the  
6    same to two justices of the peace, one of whom shall  
7    be either a justice of the court of common pleas, a  
8    judge or register of probate, or a master in chancery,  
9    requesting them to take the deposition of said witness.

1    SEC. 2. If, at the time and place appointed for  
2 taking such deposition, the said witness or any per-  
3 son interested therein, shall appear and object, the  
4 said justices shall not proceed to take the same, un-  
5 less, on hearing the parties, it shall be made satisfac-  
6 torily to appear, that such testimony may be material  
7 to the petitioner, and is not sought for the purpose of  
8 discovery, or of using the same in any suit then pend-  
9 ing, or thereafter to be brought against said witness,  
10 and that the petitioner is in danger of losing the same  
11 before it can be taken in any suit, wherein his right,  
12 title, interest, or claim can be tried; and in all cases  
13 the petitioner, his agent, or attorney, shall, at the re-  
14 quest of such witness, or any person interested in said  
15 deposition, be examined on oath.

1    SEC. 3. Whenever, in the opinion of said justices,  
2 there is no sufficient provision already made by law  
3 for giving notice to parties, adversely interested, to ap-  
4 pear at the taking of such testimony, said justices  
5 shall cause such reasonable notice to be given, as to  
6 them shall seem proper.

1    SEC. 4. All acts and parts of acts, inconsistent  
2 with the provisions hereof, are hereby repealed.

SENATE.....

.....No. 63.

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**SUPPLEMENTAL REPORT**

**OF THE**

**BANK COMMISSIONERS.**

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## MESSAGE.

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*To the Senate and House of Representatives :*

I transmit to the two Houses a Supplemental Report of the Bank Commissioners, containing the result of their examination of those Institutions, which were not included in their first Report, and of certain Banks, whose Charters have been annulled by law, or surrendered by the stockholders, which Banks, by the act of the 21st of February of the present session, it is made the duty of the Commissioners to visit and examine. For the sake of bringing this Report without delay to the knowledge of the Legislature, it is transmitted in the original to the Senate.

EDWARD EVERETT.

*Council Chamber, 26th March, 1839.*





*To His Excellency, EDWARD EVERETT,  
Governor of the Commonwealth of Massachusetts :*

The Bank Commissioners respectfully submit the following

### **SPECIAL REPORT :**

The law creating their office directs them to visit every Bank and every Provident Institution for Savings at least once, in every twelve months, and as much oftener as they may deem expedient. It also directs them to make a Report to the Governor of the general conduct and condition of the Corporations visited by them in the month of December annually. At the time of their Report in December last, eight only of the first twelve months after their appointment had elapsed. At that time, however, all the Banks in the Commonwealth had been visited and examined; with the exception of the City, Globe, Granite, Hamilton, Massachusetts, New England, State, Tremont, Union, and Washington Banks, all in the city of Boston; which Banks have since been visited and examined. And in the same manner, in which the Commissioners have reported generally, upon the condition and management of the Banks examined previous to their Annual Report; and in the same connexion with the general observations and suggestions therein contained, they report with great satisfaction, that the

## 6 BANK COMMISSIONERS' REPORT. [March,

Banks above named, are not only in a sound condition, but have been managed conformably to the laws made for their government. In the progress of the examinations of these Banks, every required facility and explanation has been promptly and cheerfully afforded by their officers.

Previous to their Annual Report, the Commissioners had visited and examined all the Provident Institutions for Savings in the Commonwealth; except the two in the city of Boston, and one in Cambridge; the examinations of which have been since completed; and the results of these examinations have been satisfactory to the Commissioners. The investments of the funds of these Institutions, and the various notes, certificates, and other securities, the evidences of those investments, were examined in detail. The method of keeping the accounts in the Savings Institutions in Boston, and the system of accountability prescribed by their by-laws, and carried out in practice, seem to be as nearly perfect as could be desired. The losses which these Institutions have suffered, in common with the whole business community, from the depreciation of the stock and liabilities of certain Banks, owned by them, or held as collateral security, have not been to an extent, calculated to affect their usefulness or seriously to affect the interests of the Depositors. The "Provident Institution for Savings in the town of Boston," was incorporated in 1816. The amount of its Deposites on the 11th of February last, was \$2,008,516 43. The number of Depositors was 13,321. A detailed statement of the concerns of this Institution might have been contained in this Report, were it not rendered unnecessary by the fact that such statement is published semiannually in the public papers, in the

months of January and June, by the officers of the Institution. While these Institutions are conducted with their present system of accountability, with the feeling of responsibility which seems to be entertained by all who are connected with their management; with the skill and attention which is devoted to their investments; there can be no reasonable doubt, that the funds entrusted to their keeping, will remain in the greatest possible security; yielding dividends to the Depositors, or an accumulation to their credit, as great as is consistent with such security.

The Commissioners have deemed it necessary and expedient to make repeated visits to several Banks in the Commonwealth, in compliance with the direction contained in the law creating their office; and they have had written communication with several others. They have reason to believe, that these visits and communications have been productive of benefit to those Banks, and to the public interest. They have reason to hope, that they shall generally be able to secure, wherever it may be necessary, the co-operation of the officers of Banks, in producing a more exact conformity with the provisions of law, and improvements in their general condition.

In regard to the subject of domestic exchange, and the rates received by the Banks, upon paper payable abroad, the Commissioners do not think any special remark necessary at this time. This matter, however, as their experience may be enlarged, will not escape their attention.

In obedience to the provisions of a law of the present session, passed on the 21st of February last, the Commissioners have visited and examined certain Banks, whose Charters have been annulled by the Legislature in previous years, or surrendered by their stockholders. The

proceedings of these Banks prior to the annulling of their Charters, have been matters of legislative examination and public notoriety, and do not come within the scope of the present law, except so far as they may be of use in showing their present condition. The practical inquiries contemplated by the present law, are,—In what manner have these Corporations been managed since the repeal of their Charters? To what extent have their liabilities *been reduced*? What are their *present liabilities and resources*? What is their present condition and management, and what have their creditors and the public to expect from them? The Commissioners will proceed to the statement of the condition of these Corporations separately; taking them in their alphabetical order. And while they wish to avoid encumbering their Report with useless details, they hope to omit nothing essential or desirable for the information of your Excellency and the Legislature. The method of examination, generally, has been to verify the statement of the condition of each Corporation, as presented by the Cashier; by examination of the various items upon the books, and by a particular inspection of the notes and securities held by the Bank, and also those held as collateral, taking a detailed account of the same. The Commissioners have also examined the Managers of the Institutions, under oath, in relation to the manner in which the business of winding up their concerns, has been carried on since the repeal of their respective Charters, and have also examined into the details of particular transactions, so far as they have deemed it necessary.

In relation to that portion of these Corporations, whose resources will undoubtedly avail to the discharge of their liabilities to the public, and leave a surplus to be

divided among their stockholders, the Commissioners have not undertaken to publish an estimate of the value of their stock : such estimate not being required of them by the law. Besides, there seemed to them to be no present necessity for such estimate ; and in the course of a single examination limited as to time, and considerably occupied in laborious details, not particularly connected with that subject, they are apprehensive that their estimates would not prove sufficiently accurate to be of any great practical benefit. If such estimate should be desirable to any portion of the public, it would probably be attended with better effect after subsequent examinations.

In stating the nominal amount of the assets of the several Corporations in the subsequent details, the items of their own stock, standing among their resources, as well as all items which are merely matters of account, are not included.

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### CHELSEA BANK.

Incorporated April 16, 1836. Charter repealed April 19, 1837. Capital \$100,000.

On the 20th April, 1837, by vote of the stockholders of this Institution at a special meeting, Charles G. Loring and William Dehon, Esq's. were appointed Receivers and Trustees of the Corporation ; to take charge of the estates and effects thereof ; and to collect the debts and property due and belonging thereto ; and to do all things necessary for the final settlement of the business and affairs of the Corporation : and Samuel H. Babcock, George Bond and William H. Gardiner, were appointed a Supervising Committee, to advise and direct the Receivers, in the discharge of their duties ; with power to ap-

## 10 BANK COMMISSIONERS' REPORT. [March,

ply to the Supreme Judicial Court if they saw fit, for the appointment or confirmation of said Receivers or Trustees. This last power they have not exercised; and the Receivers have proceeded in the business of their appointment, in connexion with the said Committee, by virtue of this appointment of the stockholders. On the 21st of said April, the Receivers took possession of the goods and effects of the Corporation.

The following statement will show the liabilities of this Corporation to the public, on the 21st April, 1837, and on the 18th March, 1839; and of course the reduction of those liabilities, between those periods.

### *Liabilities of the Chelsea Bank.*

	April 21, 1837.	March 18, 1839.
Bills in Circulation, . . .	\$88,486 00	\$45,481 00
Post Notes, . . .	20,600 00	8750 08
State Tax, due, . . .	500 00	500 00
Rent, due, . . .	101 00	101 00
Sundry Debts, . . .	139 71	125 00
	\$109,826 71	\$54,957 08

About \$20,000 of the above circulation, have been presented and protested, and of these about \$8,500 are the foundation of suits now pending against certain persons, as stockholders. Of the remaining \$25,000, the larger part are probably still abroad in general circulation.

To meet these liabilities and accruing expenses, the Receivers have the following assets :

Cash funds . . . . .	\$4,738,97
Due from W. H. & G. L. Montague, aside	
from their stock notes . . . . .	32,161,75
Due from J. B. Glover, do, . . . . .	22,809,60
Personal property, say . . . . .	30,00
	<hr/>
	\$59,740,32

There are some collateral securities for the above debts, both of notes and personal property ; the value of which the Commissioners have no means of estimating satisfactorily. The estimate put upon the value of these debts and securities, by the Trustees, may appear from a contract which has been made by them, with the advise of the Supervising Committee, with the Messrs. Montague ; that upon the payment by them, of the sum of \$33,000 on or before the 1st April, 1840, in bills or post notes of the Bank, and upon a sufficient guaranty being furnished of the receipt by the Trustees, from other debtors of the Bank, of 50 per cent of the outstanding liabilities, in current cash, and of the whole amount of the expenses of winding up the concern ; all the demands against said Montagues, and all their collateral, except their Bank shares shall be surrendered, and a discharge given to them. Should this contract be fulfilled, there will be on the 1st April, 1840, liabilities of the Bank in the community to about the amount of \$21,000 ; to meet which, the resources will be, the balance of Mr. Glover's debt and collateral, after 50 per cent. of the liability in current cash has been received, as guaranteed ; and the 50 per cent. then on hand. This result however, depends upon the fulfilment of the contract on the part of the Messrs. Montague.

All the stock of the Bank, except forty-one shares, now stands in the name of the Bank ; and of these, twenty-



## 12 BANK COMMISSIONERS' REPORT. [March,

five shares stood in the name of Glover, and have been pledged to one of his creditors as collateral.

The whole amount yet received by the Trustees, in current money from the assets of the Bank is \$14,380 62, of which there has been paid towards compromises, in effecting the reduction of the liabilities of the Bank, and towards expenses of collection, and services of Trustees, \$9,641,65, and the balance is the item "Cash funds" before mentioned.

Nine hundred and fifty-nine shares of the stock of the bank, having been pledged as collateral by the Montagues & Glover, to secure their notes, to the utmost of the par value of those shares; have been taken and considered as the property of the Corporation, and by that process said notes have been considered as paid.

It will be seen that the reduction of the liabilities of the Bank to the public, since the appointment of the Trustees, has been principally effected by the process of absorbing those liabilities, by means of a portion of the debts due to the Bank, to the discharge of which they have been applied. And under the best possible aspect of the case, such will continue to be almost the only means of withdrawing those liabilities from the hands of the public. The only consolation to the public, in whose hands the liabilities of this Bank have depreciated is, that since the appointment of Trustees, its assets have been in the hands of those, whose character gives assurance, that the best measures would be taken in regard to them of which the case would admit.

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### COMMERCIAL BANK.

Incorporated June 15, 1831. Charter repealed April 21, 1838. Capital \$500,000.

The following statement will show the liabilities of this Corporation to the public, on the 9th March, 1838, and on the 28th February 1839.

*Liabilities of the Commercial Bank.*

	March 9, 1838.	February 28, 1839.
Bills in Circulation, . . .	\$414,739 00	\$4201 00
Deposits on Interest, . . .	5000 00	. . .
Post Notes, . . . . .	34,500 00	. . .
Special Deposits, . . . .	31,900 00	. . .
Free Deposits, . . . . .	1245 01	5647 19
Balances due other Banks, .	23,247 81	75
	\$510,631 82	\$9548 94

And of the above item Deposits, \$5,647 19, a portion, viz. \$5,539 76 is to be applied upon debts due the Bank from the Depositors; so that the present liabilities of this Bank to the public amount to only \$4,309 18. At the time of the examination by the Legislative Committee of the last session, from whose Report, the above statement of the then liabilities is taken, \$347,389 of the item, "Bills in circulation" were held by the associated Banks; and \$67,350 were in general circulation, as appears by the said Report. The assets of this Corporation amount nominally to \$540,332 56, and the amount which in the end will be actually collected from them, is estimated by the Directors at about \$445,000—31 shares of the capital stock are owned by the Bank.

The affairs of this Corporation are managed by the President and Cashier, with the advice of a Board of Directors.

## 14 BANK COMMISSIONERS' REPORT. [March,

### COMMONWEALTH BANK.

Incorporated February 20, 1824. Charter repealed April 2, 1838. Capital, \$500,000.

The following statement will exhibit the liabilities of this Corporation to the public, at the time of its examination by the Legislative Committee, January 13, 1838; and its liabilities March 18, 1839.

#### *Liabilities of the Commonwealth Bank.*

	January 13, 1838.	March 18, 1839.
Bills in Circulation, . . .	\$358,952 00	\$77,999 00
Post Notes, . . . . .	11,500 00	9500 00
Deposites, . . . . .	523,478 99	363,251 53
Dividends Unpaid, . . .	275 50	.
Due City Banks, . . . .	205,000 00	114,502 78
	\$1,099,206 49	\$565,253 31

The reduction of the amount of bills in circulation, had proceeded very rapidly, before the Legislative Committee had completed their investigation, those bills having been received in payment of debts to the Bank; and the amount stated by them to be in circulation, on Feb. 8, 1838, was \$206,851; and the reduction of the bills in circulation, since that time, has been principally effected, by receiving them at par, in payment of debts due to the Bank.

The item "Deposites" shews the actual amount due to Depositors, without deducting therefrom the overdrafts. It includes the indebtedness of the Bank to the govern-

ment of the United States. The balance due to the government, as stated by the Legislative Committee, was \$337,625 29; and in reduction of this indebtedness, there has been paid to the government, by means of a portion of the property of the Warren Association, the sum of \$166,437 90: and by this arrangement, the details of which have been made public, the large debt of the Warren Association to the Bank, has been extinguished. It will be seen, that the present amount due from the Bank to the government, is included in the above item "Deposites." And of the remainder of that item, after deducting the indebtedness to the government the principal part is due to Banks abroad, and to the Boston Savings Institution.

The notes assigned in trust, for the indemnity of the sureties of the Bank, to the government, as stated in the Report of the Legislative Committee, with the exception of those of the Warren Association, were stated to remain as they were, at that time.

Of that portion of the item "Deposites," which consists of indebtedness to Banks abroad, the principal part is secured by trustee process. Of the item "due City Banks," about \$100,000 is secured by transfers in pledge of the notes and obligations of the New England Crown Glass Co., the avails of which, it is confidently expected, will be more than sufficient to discharge the debts for which they are pledged.

Of the bills in circulation, about \$50,000 are known to be in the city of Boston, and have been put on interest. The post notes outstanding, are also on interest. The amount of bills therefore in general circulation, cannot exceed \$28,000.

The assets of the Bank, including the overdrafts,

## 16 BANK COMMISSIONERS' REPORT. [March,

amount nominally to \$1,056,403 90. It is certain, however, that a very severe loss is to be suffered by the Bank upon them. The Commissioners, after carefully examining these assets in connexion with the liabilities of the Corporation to the public, and making all necessary inquiries of the Directors, and also of other gentlemen, intimately conversant with the concerns of the Institution, and the nature of its liabilities, and of its assets, can entertain no reasonable doubt that its resources are sufficient ultimately to redeem all its liabilities to the public.

The business of winding up the concerns of the Corporation, since the repeal of its charter, has been carried on by the President and Cashier, and five other Directors; with the continual assistance and advice of counsel of high character.

### FRANKLIN BANK.

Incorporated March 8, 1828. Charter repealed, April 4, 1838. Capital, \$150,000.

The following statement will show the liabilities of this Corporation to the public, at the time of the examination by the Legislative Committee, January 12, 1838; and also those liabilities, as they existed, February 14th, 1839.

#### *Liabilities of the Franklin Bank.*

	January 12, 1838.	February 14, 1839.
Bills in Circulation, . . .	\$142,345 00	\$119,089 00
Post Notes, . . . . .	167,075 00	126,075 00
Deposites and Scrips, . . .	44,400 00	25,000 00
United States Treasury, . .	12,311 25	12,311 25
	<b>\$366,131 25</b>	<b>\$262,475 25</b>

In addition to the present liabilities as above stated, there is nominally due to Depositors, the sum of \$11,641 80, most of which stands to the credit of persons indebted to the Bank. Before the Commissioners completed their examination, the outstanding liabilities were reduced by the sum of \$15,933 19, by their payment into the Bank by sundry debtors, in discharge of an equal amount of their obligations to the Bank. At the close of the examination, therefore, Feb. 26th, 1839, the liabilities to the public were stated at \$266,542 06; showing a reduction of the liabilities, since the Committee's examination of \$99,589 19; which reduction has been effected, by receiving that amount of the liabilities of the Bank in discharge of obligations due to it.

The books and papers of this Corporation are in the hands of Mr. Charles Hickling; and Messrs. J. Mears, J. Dunham, and H. Montgomery, are a Committee to consult and confer with Mr. Hickling in the settlement of the concerns. This arrangement was made by vote at a stockholders' meeting in July last, (Mr. Hickling having then been in the Bank, since about the time of its failure,) and it appears by the records, that the reason stated for this arrangement was, the impossibility of collecting sufficient funds, to defray the expense of Trustees. Mr. Hickling is directed by a vote of the stockholders, to close up the affairs of the Corporation, by receiving as far as he may be able, the liabilities of the Bank, in payment for the notes and checks held by the Bank. The amount of good money which he has received, has been scarcely sufficient to pay expenses; and he assures the Commissioners, (and they have not been able to find evidence to prove the contrary;) that the prospect is no better for the future. The only process going on, is the gradual absorption of a portion of the liabilities, by an

## 18 BANK COMMISSIONERS' REPORT. [March,

equal part of the assets. The only circumstance which gives the outstanding liabilities any value, is the occasional demand for them created by the efforts of debtors of the bank, to procure them to pay in, upon their obligations. Among the obligations discharged by this process, is the debt of about \$43,000, mentioned in the Committee's Report, against the South Boston India Rubber Company, of which Company several of the Directors of the Bank were members; and about \$17,000 more of the then existing indebtedness of the Directors, has been discharged in the same way. It will be recollected, that the notes of the said Company, as well as the notes of the Directors, were found by the Committee to be, in their terms, payable in the liabilities of the Bank. Of the Post Notes, outstanding, it was stated to the Commissioners by Mr. Josiah Dunham, a Director, that he now held more than \$30,000, as well as several thousand dollars of the bills, which he would before this have paid in, in discharge of his indebtedness to the Bank, had it not been for a process now pending, in which he has been summoned as a Trustee, on account of said indebtedness. Many of the bills of the Bank, are probably now afloat in the community, in various parts of the country; and though they have been pretty thoroughly discredited, some of them are still occasionally made the instruments of fraud. The process of drawing them out of circulation, by suffering them to be paid in, in discharge of debts due the Bank, those debts being incapable of collection in any other medium, on account of the insolvency of the debtors, may be productive of some public benefit; while it is possible some small portion of the debts may be collected in current money hereafter. The item "Deposites and Scrips," is made up of Blue Books. The sum due to the United States, is secured by the attachment of various property and securities of the Bank.

The nominal Resources of the Bank amount to \$283,144 88, of which \$121,875 99 is a charge against B. F. Hathorne, the former Cashier, which is worth little or nothing. The Commissioners do not deem it necessary to extend their Report with further details. Mr. Hickling appears to be faithfully performing his duties in relation to the Institution and the public. The history and condition of the Institution, were fully set forth in the Report of the Legislative Committee of the last session. It may be sufficient here to record the melancholy experience of another year.

### FULTON BANK.

Incorporated March 27, 1833. Charter repealed April 19, 1838. Capital \$500,000.

The statement which follows will shew the liabilities of this Corporation to the public, at the time of the examination by the Legislative Committee, February 12, 1838, and also its liabilities March 4, 1839.

#### *Liabilities of the Fulton Bank.*

	February 12, 1838.	March 4, 1839.
Bills in Circulation, . . .	\$335,004 00	\$67,986 00
Balances due to other Banks, . .	38,000 00	30,004 50
Deposites, (Blue Books,) . . .	73,516 70	61,516 00
Deposites on Interest, (Post Notes,) .	24,000 00	. . .
Unclaimed Dividends, . . .	1,283 00	1,270 50
Individual Deposites, . . .	. . .	289 71
	\$471,803 70	\$161,066 71



## 20 BANK COMMISSIONERS' REPORT. [March,

The above liabilities, February 12, 1838, appear larger than the statement in the Committee's Report, by the sum of \$25,885. The statement presented to them by the then Cashier, was incorrect, and the balance presented by it was a forced balance. The accounts of the Bank did not balance them, and all the errors have not yet been detected. The apparent error now, however, is but \$1,407 35, by which sum the Cr. side is deficient. It could not have been expected that the Committee of the Legislature would have discovered the liabilities which do not appear in their statement, as they did not appear in their proper places upon the books of the Bank, and it does not seem that they were known at that time by any officer of the Bank except the Cashier. Of the bills in circulation, viz. \$67,986, on the 4th March, 1839; \$45-800 are in the hands of the Associated Banks, and are to be redeemed out of the avails of notes, belonging to the Fulton Bank, and lodged in the New England Bank, as Receiver; and \$6,228 have been received from that Bank, since March 4, and destroyed, so that the amount now in general circulation is \$15,958. The original amount held by the Associated Banks was \$289,011.

Of the capital stock, 1,167 shares are held by the Corporation. The nominal assets of this Bank, aside from said shares of stock, are about \$516,096 81, of which about \$200,000 are considered valueless entirely; and upon the remainder a very severe loss must be sustained, a loss which may be not much less than 50 per cent. The present Managers of the Corporation are of the opinion, that the avails of the assets, will be ultimately sufficient to extinguish the liabilities to the public; and with faithful and prudent management, the Commissioners are inclined to believe that opinion will be sustained by the event.

The result however may be affected to a limited extent, by the event of several lawsuits now pending.

January 22, 1838, a new board of five Directors was chosen; and the concerns were managed by them, with the assistance of a Cashier, until Oct. 8, 1838, when three of the same Directors, and two other gentlemen, were chosen to constitute the new Board. That meeting was continued by adjournment to Jan. 7, 1839, when Messrs. John C. Page, and James M. Whiton, two of the Board of Directors, were appointed a Committee with full powers to settle and close up the concerns of the Corporation; and in that business, they have been since engaged. The Commissioners are assured, by the said Committee, that the management of the affairs of the Corporation will be conducted with a just regard to the interests of its creditors and the public.

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### KILBY BANK.

Incorporated April 15, 1836. Charter repealed, April 17, 1838. Capital, \$500,000.

The following statement will show the liabilities of this Corporation to the public, at the time of its examination by the Legislative Committee, Feb. 3, 1838, compared with those liabilities, March 2, 1839.

## 22 BANK COMMISSIONERS' REPORT. [March,

### *Liabilities of the Kilby Bank.*

	February 3, 1838.	March 2, 1838.
Bills in Circulation, . . .	\$158,730 00	\$32,965 00
Balances due other Banks, . .	15,000 00	. . .
Deposites, . . . . .	59,394 86	35,418 23
Post Notes, . . . . .	6,000 00	6,000 00
Dividends Unpaid, . . . . .	1,860 00	45 00
Treas. of Massachusetts, . . .	. . .	2,500 00
	\$240,984 86	\$79,918 23

Of the above circulation, however, at the time of the Report of the Legislative Committee, \$110,000 were in the hands of the Associated Banks, which have since been redeemed in full, out of the assets of the Kilby Bank ; and the circulation further reduced to its present amount of \$32,985 ; of which it is stated, that at least \$20,000 are now in the city, and on interest.

The "Deposites" are now mostly due to the Savings Institution and Banks abroad, and are upon interest. The portion due to Banks abroad will be paid off by the avails of notes transferred to them. Included in this item is also a note for \$3,300, for money temporarily borrowed to complete the settlement with the Associated Banks. The affairs of this Corporation are managed by the President and Cashier, with advice of the Board of Directors. The Resources are ample to extinguish its liabilities to the public, and leave a large surplus to apply upon the stock, of which 1023 shares are now owned by the Bank. The best assets were lodged with the Receiver of the As-

sociated Banks, to secure and pay off the bills in their hands ; and the surplus of those assets, after accomplishing that purpose, have been recently handed over to this Corporation. The Commissioners are assured, that the liabilities to the public will be fully paid off at the earliest time at which it is possible to collect the means : and they have reason to believe that the bills in circulation will be very shortly provided for and redeemed in full, so far as they may be presented.

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### LA FAYETTE BANK.

Incorporated April 16, 1836. Charter repealed April 2, 1838. Capital, \$150,000.

The following is a comparative statement of the liabilities of this Bank to the public, as they existed at the time of the examination by the Legislative Committee, January 25, 1838 ; and at the time of the examination by the Commissioners, February 23, 1839.

#### *Liabilities of the La Fayette Bank.*

	January 25, 1838.	February 23, 1839.
Bills in Circulation, . . .	\$90,071 50	\$69,813 50
Post Notes, . . . . .	88,150 00	61,650 00
Commonwealth Bank, . . .	14,709 26	2,933 06
Deposites, . . . . .	61,771 21	63,336 77
	<hr/> \$254,701 97	<hr/> \$197,733 33

## 24 BANK COMMISSIONERS' REPORT. [March,

At a stockholders' meeting, on the 17th of March, 1838, Messrs. Charles Hickling and George Savage were appointed Trustees; and the effects and property of the Bank were placed in their hands; and Messrs. Stephen Child, A. G. Smith and A. F. Cochran, were chosen a Committee to consult with said Trustees, and the Trustees were authorized to compromise any demands due to the Bank, and to settle in any way, all demands against the Bank, as they might think for the best interests of the Bank and its creditors; and said Trustees and Committee were authorized to apply to the Supreme Judicial Court for the appointment or confirmation of the Trustees, if they should deem it necessary; but no such application has been made by them. On the same day, at a meeting of the Trustees and Committee, the former were authorized to pass away any of the notes held by them, for the liabilities of said Bank; in order that the affairs of the Bank might be brought to as speedy a close as possible. In pursuance of that authority, the Trustees have since accomplished the reduction of the liabilities, which appears from the foregoing statement; receiving the liabilities of the Bank in discharge of obligations due to it. The Trustees declare, that since their appointment, they have been able to collect but about three hundred dollars in current money. In the few cases where suits have been commenced, to enforce the collection of debts due to the Bank, it has been done, by the agency of persons holding claims against the Bank, at their own hazard and expense. In the few cases where notes due the Bank were secured by mortgage of real estate, those securities have been taken on execution by creditors of the Bank. The Trustees also state, that they have made out a list of the notes and checks under their control, and

whenever they have met with persons holding obligations against the Bank, have offered them any of said notes and checks in exchange for their liabilities; but have found none willing to make the exchange; so nearly valueless are all the assets of the Bank; which have not in some form been seized upon by creditors. Occasionally, however, some debtor to the Bank makes an effort to discharge his obligations, by procuring an equal amount of the liabilities of the Bank; and these operations have a tendency to give some trifling value to those liabilities. Should there be opportunities hereafter to secure or collect any of these debts to the Bank, the Trustees will probably be ready to avail themselves of them. The Commissioners have reason to believe, from all they can learn, that the Trustees are faithful and attentive; and they see no sufficient reason to induce them to interfere with the present arrangements, at this time. Of the bills of this Bank, stated as in circulation, viz. \$69,813 50, about \$40,000 are of the new emission, made by the Directors after the failure of the Bank; the circumstances of which are detailed in the Report of the Legislative Committee. As the Directors, who took these bills from the Bank for the purpose of circulation, testified before that Committee, that the same were mostly then in their possession; and as the receipts and checks of said Directors, given for those bills, still remain in the Bank, the Trustees immediately upon their appointment, published a notice, that those bills would not be received, in payment of obligations due the Bank, other than the checks and receipts aforesaid. The matters between the Bank and A. G. Smith, one of said Directors have not been settled for reasons alleged by him as stated in the Committee's Report. He has stated to the Trustees, however, that

## 26 BANK COMMISSIONERS' REPORT. [March,

\$7,000 of these bills are now in his possession. It is in the knowledge of the Trustees also, that about \$24,000 of these bills, which were pledged by D. H. Kane, another of said Directors, have been sold to a variety of persons by the pledgee, to realize the amount for which they were pledged; for say, from six to eight and ten cents on the dollar, and some of them at least are now abroad, the occasional instruments of fraud in the community. Of the whole amount of this new emission of bills thus taken from the Bank, which was say \$52,603 50—but \$11,649 have been returned and defaced. Of the whole amount of bills in circulation, it seems that but about \$20,000 are of the old emissions, and these only will be received by the Trustees if offered in payment of obligations due to the Bank.

The debt to the Commonwealth Bank, was originally secured by an amount of notes taken out of the assets of the La Fayette Bank, the avails of which have reduced that debt to the sum which appears in the statement, and those which remain are believed to be sufficient at least, to extinguish the remainder of the debt and interest. The Deposit account is sometimes varied by small amounts credited temporarily to persons, who present post notes or large bills in payment of obligations of less amount, and in such cases the surplus has been put to their credit as a Deposit. A considerable portion of the Deposites stand to the credit of persons who are indebted to the Bank; and as settlements are made with them will be set off against such indebtedness.

The nominal assets of this Bank consisting of notes, checks and overdrafts amount to \$341,771 50, but upon examination, the Commissioners found nothing to invalidate the statements of the Trustees, in regard to them.

The history of this Bank, and its condition are set forth in the Report of the Legislative Committee, and further detail here, seems to the Commissioners to be useless.

### MIDDLESEX BANK.

Incorporated March 19, 1831. Charter repealed, April 4, 1838. Capital, \$150,000.

The following statement presents the liabilities of this Corporation to the public at the time of its examination by the Committee of the Legislature, as compared with its liabilities at the time of its examination by the Commissioners.

#### *Liabilities of the Middlesex Bank.*

	January 17, 1838.	March 9, 1839.
Bills in Circulation, . . . .	\$83,500 00	\$6,542 00
Post Notes, . . . . .	28,500 00	. . . .
Deposites, . . . . .	4,779 58	69 12
Deposites on Interest, . . . .	60,000 00	45,010 06
Dividends Unpaid, . . . . .	117 00	6 00
	<b>\$176,896 58</b>	<b>\$51,627 18</b>

The bills of this Bank are now redeemed at its counter in current bills, and have been since January 4th, 1839, when notice to that effect was given in the public papers. The item "Deposites on interest," is the debt due to the Commonwealth Bank, which was \$60,000; from which has been deducted the amount paid the Com-



## 28 BANK COMMISSIONERS' REPORT. [March,

monwealth Bank, viz : \$14,989 94, leaving the balance \$45,010 06 ; for which balance, the Middlesex Bank has been trustee, at the suit of the Maine Bank and others, creditors of the Commonwealth Bank.

The nominal amount of the assets of this Bank is \$184,716 73. The largest debt due the Bank, is from the New England Crown Glass Company, and amounts to \$54,525 27, which is believed to be amply secured ; and it is hoped it may be realized during the present year. There seems to be no reasonable doubt, that the liabilities of this Bank will all be paid off ; and that a large surplus will remain for the stockholders. Of the capital stock, 334 shares now stand in the name of the Bank.

The concerns of the Corporation are managed by the Cashier and President, assisted by other directors.

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### NAHANT BANK.

Incorporated March 22, 1833. Charter repealed, April 19, 1837. Capital, \$150,000.

The comparative liabilities of this Corporation to the public, on the 4th February, 1837, as presented in the Report of the Legislative Committee of that year, and on the 16th August, 1838, when the effects of the Corporation went into the hands of Receivers, appear by the following statement :

*Liabilities of the Nahant Bank.*

	February 4, 1837.	August 16, 1838.
Bills in Circulation, . . .	\$207,177 00	\$91,013 00
Deposites, . . . . .	36,800 90	27,714 62
Post Notes, . . . . .	26,400 00	25,116 00
Due to other Banks, . . .	34,685 13	18,172 69
Dividends Unpaid, . . .	354 00	249 00
	<u>\$305,417 03</u>	<u>\$162,264 31</u>

The bills in circulation at this time are less than the above statement by the sum of about \$5,000.

In addition to the above liabilities, there is a debt to the Atlas Bank, being the amount of certain notes bearing the endorsement of the Cashier of the Nahant Bank ; concerning a portion of which there rests a question in relation to the authority of said Cashier to make the endorsements, so as to bind the Nahant Bank. This question will probably be settled by adjudication before a Master in Chancery or a jury, as the Supreme Judicial Court may direct.

The amount for which the Atlas Bank claim to hold the Nahant Bank, is about \$65,000. Adding this, the present liabilities appear about \$227,000. The nominal amount of the assets is \$321,267 96. But such is their character, that a Committee of the stockholders, shortly before the appointment of Receivers, estimated their value, exclusive of the endorsed notes in the Atlas Bank, at \$129,255 69. The value of the notes in the Atlas Bank, so far as the promissors are concerned, may be about \$6,000: making the estimated value of all the assets,

## **50 BANK COMMISSIONERS' REPORT. [March,**

**\$135,255 69: to meet liabilities in the event of the allowance of the full claim of the Atlas Bank, of about \$227,000, besides accruing expenses. And this estimate is thought by the Receivers, to be full high enough. The affairs of this Corporation were managed by a Board of Directors, until upon the application of the Atlas Bank as a creditor, an injunction was issued by the Supreme Judicial Court, and such proceedings were had, that Theophilus Parsons, F. B. Crowninshield, and C. B. Goodrich, Esquires were appointed Receivers. The Receivers took possession of the assets of the Bank on the 16th of August last; and are making progress in the arrangements by which the property will be converted into money, and equitably disposed of in the payment of the debts of the Corporation, under the direction of the Court. That progress, of necessity, will not be rapid, but the Commissioners feel assured it will be pushed forward, as fast as a just regard to the interests of the creditors of the Corporation will admit. So thoroughly have the accounts and assets of this Corporation been recently examined, that the Commissioners have not deemed it necessary, at this time, to examine them in further detail.**

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### **BANK OF NORFOLK.**

**Incorporated March 4, 1826. Charter repealed April 24, 1838. Capital, \$200,000.**

**The following statement shews the comparative liabilities of this Corporation to the public, at the time of its examination by the Legislative Committee, March 14, 1838; and its liabilities when examined by the Commissioners, March 15, 1839.**

*Liabilities of the Bank of Norfolk.*

	March 14, 1838.	March 15, 1839.
Bills in Circulation, . . .	\$96,919 00	\$47,548 00
Dividends Unpaid, . . .	196 00	26 00
D. A. Sigourney, Treasurer, .	4,155 66	4,155 66
Deposites on Interest, . . .	20,500 00	16,000 00
Deposites not on Interest, . .	5,391 04	864 16
Post Notes, . . . . .	23,600 00	12,300 00
Balance due Suffolk Bank, . .	26,026 87	13,785 25
	<u>\$176,788 57</u>	<u>\$94,679 07</u>

The above statement shows the whole amount of bills out of the Bank, including those remaining in the Suffolk Bank, as collateral security. That amount is now \$26,600 : and of the balance, \$8,497 have been sealed up and put on interest ; and a part of the remainder are known to have been destroyed ; so that the amount now in actual circulation is \$9,432. The post notes have all been presented and put on interest. The item "Deposites on Interest" consists of three blue books. The "Deposites" are so stated, after deducting overdrafts : Deposites, \$1,393 48, less amount of overdrafts, \$529,32 = \$864 16. The assets of the Bank are nominally, \$276,271 83. From this amount, however, there will be a severe deduction for debts, wholly or partially bad. The Bank holds 141 shares of its stock. The liabilities of this Corporation to the public will all be paid. The Directors and Committee state, that the farthest time to which any part of these payments will be deferred, will

## 32 BANK COMMISSIONERS' REPORT. [March,

be July 1st, 1840; but the Commissioners trust, that these payments will be completed at an earlier period. The business of winding up the affairs of this Corporation, is carried on by the Cashier, with the assistance of a Board of Directors and a Committee of the Stockholders.

### ORIENTAL BANK.

Incorporated June 23, 1831. Charter repealed, April 25, 1838. Capital, \$750,000.

The following is a comparative statement of the liabilities of this Corporation to the public at the time of its examination by the Legislative Committee, April 17, 1838, and the liabilities at the time of its examination by the Commissioners, March 12, 1839.

#### *Liabilities of the Oriental Bank.*

	April 17, 1838.	March 12, 1839.
Bills in Circulation, . . .	\$95,803 75	\$2,717 50
Special Deposites, . . .	110,300 00	. . .
Free Deposites, . . .	286,383 01	178,531 85
Dividends Unclaimed, . . .	271 00	8 00
Balances due to Banks, . . .	30093 42	75 99
	\$522,851 18	\$181,333 34

Of the "Deposites," \$30,000 is secured by mortgage of the real estate, and \$148,100 is due to the Massachu-

setts Hospital Life Insurance Company, and it is said will soon be paid. The assets of the Bank, consisting principally of notes, real estate and cash, amount to \$904,542 99; and, although a severe loss must be suffered on these, the Corporation will pay all its liabilities, and save a considerable part of its capital.

The affairs of the Corporation are now managed by Messrs. M. S. Parker, T. C. Amory, and T. C. Smith, who have been appointed Receivers by the Supreme Judicial Court, upon the application of certain stockholders; and in pursuance of the provisions of sections 8, 9 and 10 of the 44th chapter of the Revised Statutes. This course was recommended by the stockholders, at their meeting of May 12, 1838; and is the result of an amicable proceeding in court, between the Corporation as such, and the several stockholders who applied for the appointment of Receivers. By a decree of said court, made June 29, 1838, said Receivers were appointed; and the officers of the Bank directed to deliver over the effects of the Corporation to them; and the Receivers were directed, among other things, to furnish to the court, within sixty days, a schedule of the effects of the Bank, and also to render an account to the clerk of said court, once in six months, said account to be referred to a Master in Chancery; and the provisions of said decree have been thus far complied with; and the Commissioners doubt not that the affairs of the Bank will be wound up as speedily as the nature of the assets will admit.

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The Hampshire Bank, whose charter, in the year 1837, was repealed at the request of its stockholders, it is believed, requires no immediate attention; and any other Corpora-

### **34 BANK COMMISSIONERS' REPORT. [Mar. '39.**

tions, which may come within the scope of the act of Feb. 21, 1839, will receive attention in due time ; but it is not apprehended that any special Report will be necessary in regard to them.

All which is respectfully submitted.

**JULIUS ROCKWELL,  
JONATHAN SHOVE,  
WARREN LOVERING,**

*Bank Commissioners.*

*March 25, 1839.*







**SENATE.....**

**.....No. 64.**

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**A N A C T**

**IN**

**ADDITION TO AN ACT**

**TO REGULATE**

**THE SALE OF SPIRITOUS LIQUORS.**

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**Commonwealth of Massachusetts.**

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IN HOUSE OF REPRESENTATIVES, Jan. 12, 1839.

*Ordered*, That so much of the Address of His Excellency, as relates to the License Law, be referred to the Committee ordered to be raised on that subject.

Sent up for concurrence.

L. S. CUSHING, *Clerk*.

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SENATE, Jan. 14, 1839.

Concurred.

CHARLES CALHOUN, *Clerk*.

**Commonwealth of Massachusetts.**

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IN SENATE, March 27, 1839.

The Joint Special Committee to whom was referred so much of the Address of His Excellency the Governor, as relates to the License Law, have considered the same, and direct me to report the accompanying bill.

SAMUEL B. WALCOTT,

*Chairman.*

## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Thirty-Nine.

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### AN ACT

In addition to “an Act to Regulate the Sale of Spiritous Liquors.”

**BE** *it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows :*

1    SEC. 1. No person, except as hereinafter provid-  
2 ed, shall sell any spiritous liquor, or any wine, or  
3 any liquor part of which is wine or spiritous, in a less  
4 quantity than fifteen gallons, delivered and carried  
5 away all at one time, on pain of forfeiting not more  
6 than twenty dollars nor less than ten dollars for each  
7 offence.

1    SEC. 2. The county commissioners, with the  
2 written approbation of the selectmen of any town,  
3 and not otherwise, and the mayor and aldermen of

4 any city, may, if they see fit, grant licenses to any  
5 persons as innholders, within such town or city, to  
6 sell spiritous liquors, or to travellers or permanent in-  
7 mates of their houses wines, to be used in and about  
8 their said houses or other buildings : *Provided*, no  
9 such license shall be granted in any city, unless the  
10 common council of such city shall, by vote have au-  
11 thorized such license to be granted ; and the number  
12 of licenses to innholders in any city shall not be great-  
13 er than shall be prescribed by such vote. And no  
14 person shall be so licensed, unless he shall, at the  
15 time of receiving his license, be furnished, within the  
16 house designated in his license, with suitable provi-  
17 sions and lodging for strangers and travellers, and h s  
18 license shall be revoked whenever it shall be shewn  
19 that he is not so furnished.

1 SEC. 3. The county commissioners, with the writ-  
2 ten approbation of the selectmen of any town, and  
3 not otherwise, and the mayor and aldermen of any  
4 city, when the common council shall by vote have  
5 authorized the same, may, if they see fit, license any  
6 persons to be sellers of spiritous liquors or of wines,  
7 in such towns and cities respectively, in any quantity  
8 not less than one gallon, to be delivered and carried  
9 away all at one time.

1 SEC. 4. The county commissioners or the mayor  
2 and aldermen, before granting any such license as is  
3 mentioned in the two preceding sections, shall require  
4 of the applicant therefor, a bond to the treasurer of  
5 the county or city, with sufficient sureties in a penal  
6 sum of not less than three hundred and not more than  
7 five hundred dollars, conditioned for the faithful ob-  
8 servance of the laws respecting licensed houses, and

9 the sale of wines and spiritous liquors. And they  
10 may, in the name of said treasurer, cause an action of  
11 debt to be commenced and prosecuted on such bond,  
12 in all cases in which it may be necessary to enforce  
13 the penalty for a violation of said laws, and the pen-  
14 dency of any suit on such bond or any recovery  
15 thereon, shall not be a bar to any other suits for other  
16 branches thereof.

1   SEC. 5. The county commissioners and the may-  
2 or and aldermen respectively, shall revoke any license  
3 granted by them, whenever it shall be made to appear  
4 to them, that the person to whom the same was  
5 granted, has violated any law regulating licensed  
6 houses or the sale of spiritous liquors or wines; And  
7 any person who shall continue to exercise any of the  
8 privileges granted by such license, after notice of  
9 the revocation thereof, shall be subject for each  
10 offence, to the same penalties as are provided for ex-  
11 ercising the said privileges without a license. *Pro-*  
12 *vided*, that no such license shall be revoked unless  
13 upon complaint in writing, and a notice thereof given  
14 to the licensed person so complained of.

1   SEC. 6. The court of common pleas in the county  
2 of Suffolk shall, in relation to licenses for the town  
3 of Chelsea, perform all the duties required in this  
4 act of county commissioners in their respective  
5 counties.

1   SEC. 7. No license shall be granted as before pro-  
2 vided, until the licensed person shall pay into the trea-  
3 sury of the county, in which such license is granted,  
4 for the use of the county, such sum not less than  
5 ten nor more than one hundred dollars, as the county  
6 commissioners, or the mayor and aldermen may in  
7 each case direct respectively.



1    SEC. 8. If any person with design to avoid any  
2 penalty in this act provided, shall sell or give away  
3 any spiritous liquor or any wine, or any liquor part of  
4 which is wine or spiritous, upon pretence of admis-  
5 sion to any room, show or exhibition, taking pay for  
6 such admission, or shall furnish any person with any  
7 of said articles, taking pay for some other article of  
8 merchandise, sold to such or any other person, or  
9 taking pay of such or any other person on any other  
10 pretence, or shall sell any of said articles in a secret  
11 or clandestine manner, either by a blind bar, dumb  
12 waiter, revolving stand, slide or drawer, or any other  
13 secret way, he shall be deemed guilty of the offence  
14 set forth in the first section of this act, and be subject  
15 to the penalties therein provided.

1    SEC. 9. The selectmen of any town, and the  
2 mayor and aldermen of any city, may license such  
3 persons as they deem suitable to be common victual-  
4 lers, or to be common retailers of beer, ale or cider,  
5 to be used in and about their shops in such town or  
6 city, and the licenses of such persons shall contain  
7 such conditions as shall be imposed by the ordinances  
8 of such city, or the by-laws of such town, and they  
9 may be revoked by the mayor and aldermen of such  
10 city, or the selectmen of such town. And no person,  
11 unless licensed as aforesaid, shall carry on the busi-  
12 ness of a common victualler, or of a common retailer  
13 of beer, ale or cider as aforesaid, under the penalty of  
14 forfeiting a sum not more than twenty, nor less than  
15 ten dollars for each offence ; but nothing in this sec-  
16 tion contained, shall prevent licensed innholders from  
17 selling beer, ale or cider.

1    SEC. 10. No license to a common victualler, or to

2 a common retailer of beer, ale or cider, shall be so  
3 framed as to authorize him to sell any wine or spir-  
4 itous liquor, or any liquor, part of which is wine or  
5 spirits; and no excise or fee shall be required for  
6 such license.

1 SEC. 11. Nothing in this act contained shall be so  
2 construed as to prohibit the sale of wines in original  
3 packages as imported; nor to prevent apothecaries  
4 and physicians from selling spiritous liquors or wines  
5 as a medicine, or when compounded with medicine,  
6 or rectified alcohol for medicinal purposes or the  
7 arts; nor to prevent any person from selling the arti-  
8 cles usually denominated essences or perfumery.

1 SEC. 12. The penalties prescribed by this act  
2 may be recovered in the manner and for the use pro-  
3 vided in the twenty sixth section of the forty seventh  
4 chapter of the Revised Statutes.

1 SEC. 13. All provisions of law inconsistent with  
2 this act are hereby repealed, from and after the time  
3 when this act shall take effect, but no offence com-  
4 mitted, and no penalty or forfeiture incurred, and no  
5 prosecution commenced under any act hereby re-  
6 pealed, shall be affected by such repeal.

1 SEC. 14. This act shall take effect on the fourth  
2 day of July next: *provided* the people of the Com-  
3 monwealth shall approve of, and adopt the same by a  
4 majority of the qualified voters voting thereon, at  
5 meetings legally warned and holden for that purpose,  
6 in the manner herein after provided, and not other-  
7 wise.

1 SEC. 15. The people shall be assembled for the  
2 purpose aforesaid, in the several cities and towns, in  
3 meetings to be legally warned and held on Monday

4. the sixth day of May next, at which meetings, all the  
5 inhabitants qualified to vote in town affairs, may give  
6 in their votes by ballot, for or against the adoption of  
7 this act. And the same officers shall preside in said  
8 meetings, as in meetings for the choice of senators,  
9 and shall in open meeting receive, sort, count and de-  
10 clare the votes of the inhabitants for and against the  
11 adoption of this act. And the said votes shall be re-  
12 corded by the clerks of said cities and towns, and re-  
13 turns thereof made, signed by the mayors and aldermen  
14 of the cities, and the selectmen of the towns, and the  
15 said clerks respectively. And said returns shall be  
16 sealed up and delivered to the sheriff of the county,  
17 within seven days after said meetings to be by him  
18 transmitted to the office of the secretary of the Com-  
19 monwealth, on before the fourth Monday of May next,  
20 or the said mayors and aldermen, or the selectmen, re-  
21 spectively, shall themselves transmit the same to the  
22 said office, on or before the day last mentioned. And  
23 the secretary shall, within three days after the said  
24 fourth Monday of May, examine said returns, and as-  
25 certain thereby, if the majority of the votes so re-  
26 turned are in favor of the adoption of this act. And  
27 the secretary shall, as soon thereafter as may be, pub-  
28 lish the ascertained result of the aforesaid ballotings  
29 in the several newspapers in which the laws are pub-  
30 lished, attested by himself.

1 SEC. 16. If the majority of said ballots, as ascer-  
2 tained and published as aforesaid, shall be in favor of  
3 adopting this act, the county commissioners of the  
4 several counties, and the mayors and aldermen of the  
5 several cities, shall meet upon the third Tuesday of  
6 July next, for the purpose of granting the licenses spe-

7 cified in the second and third sections of this act.  
8 And said licenses, so granted, shall be in force until the  
9 first day of April then next.

1 SEC. 17. A printed copy of this act shall be at-  
2 tested by the secretary, and transmitted by him, as  
3 soon as may be, to the mayors and aldermen of the  
4 several cities, and the selectmen of the several towns,  
5 in this Commonwealth.



## SENATE....No. 65.

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BOSTON, 29 March, 1839.

Hon. MYRON LAWRENCE,

*President of the Senate :*

SIR—I have the honor to enclose the opinion of the Justices of the Supreme Judicial Court, in the answer to the questions proposed to them by the Honorable the Senate and the Honorable the House of Representatives, which I have to request you to communicate.

With the highest consideration,

I am, very respectfully,

Your obedient servant,

LEMUEL SHAW.

*To the Honorable the Senate and House of Representatives of the Commonwealth of Massachusetts :*

The undersigned, the Justices of the Supreme Judicial Court, having considered the questions proposed to them, thereupon ask leave respectfully to submit the following

## OPINION:

It appears to have been the manifest intention of the amendment of the Constitution of this Commonwealth, to provide for an equal representation of the citizens thereof, by a distribution of representatives amongst towns, according to the number of rateable polls, at fixed periods of ten years. The system is so arranged, that the power of each town to choose one or more representatives in any one year of the ten years, may depend upon what it has done in some other year of the period. In other words, the power of a town to choose a representative during the later years of the period, may depend on the fact of their having exercised, or forborne to exercise their power, during the earlier years of the period. There is no authority reserved to the Legislature, or to any branch of the government, to take any new census of polls, or to make any new distribution of the number of representatives, which each city, town or district may choose ; and the number of years in which they may choose during a period of ten

years. It follows, as a necessary consequence, that the distribution made at the commencement of each period of ten years, must remain fixed and unalterable during such period, and until a new decennial census of polls is taken, conformably to the Constitution. The same conclusion results from the express provision of the article of amendment. This article declares that the governor and council shall ascertain the number of representatives, which each town and representative district is entitled to elect, and the number of years within the period of ten years, each city, town, and district may elect an additional representative; and when a town has not a sufficient number of polls to elect a representative each year, then how many years, within the ten years, such town may elect a representative. This is to be done at the commencement of each period of ten years. It further declares, that the number of representatives which each city, town and representative district may elect, thus ascertained and determined, shall remain fixed and unalterable for the period of ten years. That which the Constitution declares unalterable, cannot be changed by law.

We are therefore of opinion, in answer to the first question, that it is not competent for the Legislature, when incorporating a new town from territory of one or more existing towns, to authorize such new town to elect a representative to the General Court, before the next decennial census of polls shall have been taken, after its incorporation.

In answer to the second question, we are of opinion, that it is within the constitutional power of the Legislature, when incorporating a new town, consisting of territory set off from another town, or from two or more towns, to provide by law, that the new town, or the in-



habitants of that part of the new town, which was taken from the old town, shall be and remain a component part of the town or towns to which such territory originally belonged, for the purpose of electing the representatives to which said original towns were entitled by the preceding census of polls, until a new decennial census of polls shall be taken.

There may be some practical inconveniences in such an arrangement, arising from the difficulties of preparing lists of voters, warning meetings, attending at different places, for different elections, on the same day, and the like. These, however, are rather objections of inconvenience in the exercise of the right, than any constitutional impediment to the power of the Legislature. The object is to provide for the representation of the citizens, and not of the towns. As it is manifestly within the power of the Legislature to leave each town as it is, during the period of the ten years, for all purposes whatever, it seems not inconsistent with their power, to provide that all the inhabitants now composing it shall continue to act together, for one purpose—that of electing representatives—and yet may be otherwise arranged into corporations for other municipal purposes.

Of the convenience and expediency of such an arrangement, and the detailed provisions which it may require, the Legislature will judge. We are of opinion that it is within their constitutional authority to make it.

LEMUEL SHAW,  
SAMUEL PUTNAM,  
S. S. WILDE,  
MARCUS MORTON,  
CHARLES A. DEWEY.

*Boston, 29 March, 1839.*

SENATE.....

.....No. 66.

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R E P O R T

CONCERNING

PUBLIC CHARITABLE INSTITUTIONS, &c.

---



**Commonwealth of Massachusetts.**

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HOUSE OF REPRESENTATIVES, Jan. 12, 1839.

*Ordered*, That so much of the Address of His Excellency the Governor as relates to Public Charities be referred to the Committee on Public Charitable Institutions.

Sent up for concurrence.

L. S. CUSHING, *Clerk*.

SENATE, Jan. 14, 1839.

Concurred :

CHARLES CALHOUN, *Clerk*.

**Commonwealth of Massachusetts.**

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SENATE, Jan. 25, 1839.

*Ordered*, That the Committee on Public Charitable Institutions be directed to visit the State Lunatic Hospital, at some time during the sitting of the General Court.

Sent down for concurrence.

CHARLES CALHOUN, *Clerk*.

HOUSE OF REPRESENTATIVES, Jan. 25, 1839.

Concurred :

L. S. CUSHING, *Clerk*.

## **Commonwealth of Massachusetts.**

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IN SENATE, March 29, 1839.

The Committee on Public Charitable Institutions, to whom was referred that part of the Governor's Message which relates to such Institutions, and also an order to visit the State Lunatic Asylum, at Worcester, ask leave respectfully to

## **R E P O R T :**

That they have attended to the duties which devolved upon them under the various laws and resolves; and while it has led them in several instances to visit scenes of bodily and mental suffering, with which they deeply sympathize, and to the relief of which it would give them the highest pleasure to contribute, yet on the whole it is with the most heartfelt satisfaction, that they have passed in review those lasting monuments of the truly Christian philanthropy of the age in which we live, and of the enlightened and liberal policy of this Commonwealth. Nor can we forbear to congratulate our fellow-citizens that we live in an age when war ceases to be, as heretofore, the

only object of national expenditure, and battles and victories the only object of national ambition. We turn with heartfelt pleasure from trophies which, while they signalized the exploits and triumphs of one party or nation, are equally the certain memorials of suffering, disappointment, defeat and death to others.

Although by no means would we withhold the meed of honor from those who defend their country, or perish in the field of just and necessary warfare ; yet it is with unmingled satisfaction that we witness so large a share of that revenue which, in other nations, and in other times, has been expended in spreading devastation and misery, here, in our own State, devoted to the sacred duty of restoring reason to the wandering mind, pouring the light of science into minds shut out forever from the light of day, and even performing that office, which, before the improvements in modern medical science, was considered the prerogative of Omnipotence alone, *restoring sight to those that are born blind.*

The Committee, in the early part of the session, took several opportunities to examine into the situation of the Institution for the Blind. The result of their investigations, in a pecuniary point of view, they have had the honor of reporting on a former occasion, and also the satisfaction of knowing that, notwithstanding it was in favor of the continuance of a grant of a considerable sum of money from the treasury, yet it received the unanimous approbation of both Houses. And we cannot forbear, on this more general review of the subject of our charitable institutions, to revert to the fact that the bounty and liberality of Massachusetts has established an institution for this unfortunate and helpless class of the community, which they have full evidence before them, has taken

precedence of any institution of the kind in the world : and more particularly to the fact, that her present enlightened Legislature have, with uncommon unanimity, continued their bounty, notwithstanding the present low state of her treasury. And we would further observe, that the Committee feel much satisfaction in the change which is about to take place in the location of this asylum, by which the inmates will be better accommodated, the schools, and especially the workshops, be placed in more spacious apartments, and those more pleasant, at least to their friends, if not to them : and by which an unfortunate instance of the extravagance and folly of some of our citizens, will, with true yankee ingenuity, be converted into a magnificent monument of the enlightened and humane policy of the State, and the utilitarian spirit of the age.

In obedience to a resolve of the Legislature, your Committee on the 18th of March instant, made a visit to the State Lunatic Hospital at Worcester, and made thorough inquisition into every department of that extensive establishment. The Committee made it an object to visit every part of the building, even to the attics and cellars ; they passed through all its wards, entered or looked into every apartment, and saw every patient, and especially those few most unfortunate objects, whose entire destitution of reason, renders them unfit to partake, and incapable of enjoying, even that modified liberty, which we are happy to see extended to more than nineteen twentieths of all the inmates of the hospital, but notwithstanding the painful feelings which are excited by visiting these few, who are thus cut off entirely from society, the Committee are happy to observe, that both at Worcester and at Charlestown, there is much less occasion for strong and solita-



ry cells, than was expected at the time of the erection of the structures, and a large part of such cells remain entirely unoccupied. The whole number in the Hospital at the time of our visit was 219, more than two hundred of whom were in the constant enjoyment of social intercourse with those of their own class, and with the attendants, each ward being a separate community, each patient having his or her own room, and enjoying the common hall, into which each room opens, for amusement or conversation.

A large part of the patients, especially the females, were employed in some useful labor, some of them assist in the operations of the kitchen and wash-room, and many were engaged sewing and knitting, in their own rooms. And among the many mental hallucinations, under which they labor, it is with much satisfaction we observe, that few of them are of a distressing nature, but on the contrary the most extreme imaginations of those whose minds are still active, though insane, were such as implied much dignity and self-complacency. One is the proprietor of the whole establishment, with a paramount claim to all things. One is the Queen of Spain. One is the Prince of Hayti, and one, a physician, having caught the patriotic spirit of the day, handed us a copy of his general orders, as follows :

HOSPITALIA, *Worcester, March 14, 1839.*

GEN. WOODWARD,—Sir, I hereby appoint Colonels Thomas C. Amory, and Henry F. Baker, both of Boston, my aids de camp, Ex Generals Levi Lincoln, John Davis, Samuel T. Armstrong and General Edward Everett my State staff, requiring them to rally and equip within one week to the extent, 10,000 horsemen

(Knights.) (Let every horse have an unicorned bridle,) 5000 Infantry, 3000 Artillery, ready to move and act as occasion may require.

Fail not to obey, *Ne mora Sed Festina.*

*Anno Solis*, 5839. God prosper the State.

VICTOR Æ KNIGHT.

P. S. It is expected that Connecticut and New Hampshire will do the same. *Sapientibus Verbum Sat.*

Your Committee attended divine service at the chapel of the hospital on Sabbath March 19. About 140 of the patients were present, well dressed, and a more orderly, quiet and attentive assembly we have seldom if ever witnessed; and we had the satisfaction of seeing quite a number, who, on our visit to their wards on Saturday, were much excited, and quite vociferous, yet on the Sabbath, sitting and calmly listening to the exposition of the Scriptures, and joining with apparent interest in the devotional exercises of the day, a most pleasing proof that religion, when properly explained and judiciously exercised and enforced, is calculated, in an eminent degree, to soothe the troubled mind, and to concentrate the remains of wandering reason, by its high claims to an importance which supersedes and overlooks the disturbing passions of this sublunary world.

Interesting inquiries were made by some patients after friends in the different towns in which we were acquainted, and several letters were handed us, for our conveyance to their friends, some of which we were authorized to examine, and it is but justice to say, that they gave convincing evidence in favor of both the heads and hearts of the writers, and that they will soon be restored to their friends in peace.

## 10 PUBLIC CHAR. INSTITUTIONS. [March,

One immense advantage which has resulted from the establishment of the McLean Asylum at Charlestown, (which your Committee have also taken occasion to visit,) and of the Lunatic Hospital at Worcester, and the mild and humane treatment of the insane now in use at both these institutions, is the almost total change in the ideas of the people at large, as to the nature and cure of diseases of the mind. The reports of the superintendents and trustees, and the mass of facts which have been spread before the public, cannot fail to work an almost complete revolution in the manner of keeping, and the medical treatment of the insane in other places, and we cannot but hope that these expositions of the most common causes of insanity will have a salutary influence, in preventing its occurrence, in those cases which depend on the voluntary agency of the individual.

On the 21st instant, the Committee made a visit to the Massachusetts Eye and Ear Infirmary in this city. We were received by Doct. Jeffries, who conducted us over the establishment, and gave us a short history of the cases of most of the resident patients, which at this time is small. From the warm and spontaneous testimony of several intelligent patients, and from our own observation, we were entirely satisfied of the importance of the institution. Much interest has been justly felt in the education of the blind; yet it requires but a moment's consideration to perceive, that an infinitely greater benefit is bestowed where sight is saved which otherwise might have been lost, or the blind are literally made to see, as is now frequently the case in this institution. The treatment of the diseases of these delicate organs is founded upon the strictest attention to their anatomical structure, and the morbid changes in their physiological action, oc-

casioned by disease, and is widely distinguished from that confident empiricism which often promises most when it knows the least what human skill can or cannot perform.

After this hasty review, the Committee feel it their duty to revert to several subjects, and make such observations as the circumstances of the several institutions to which the State is contributing large sums of money, seem to suggest.

With regard to the Deaf and Dumb Asylum at Hartford, so far as this State is concerned, there seems little left to be desired. The sum appropriated, \$6,000 annually, has been more than sufficient to support all applicants for this bounty, within the ages prescribed by law, and we have, in one case, in conformity with former precedent, reported a special resolve, for the admission of an individual, younger than the prescribed age.

As to the blind, the expense must always be large in proportion to their numbers, their labors must be unproductive compared with the deaf mutes, or the inmates of alms-houses, and the apparatus for their instruction is comparatively very expensive. Yet we cannot but hope that when their accommodations shall be permanent, and suitable, and their apparatus complete, at least the surplus which they have enjoyed for several years, beyond the direct appropriation, may be dispensed with.

In regard to the Hospital at Worcester, many inquiries have been made, and some dissatisfaction felt, in a few towns, that after such very large sums have been expended in buildings and lands, and an annual appropriation of \$8000 for the support of its officers and other expenses, still a price should be required for admission, so much larger than the average expense of the poor in

towns. To which it may be said in reply, that the labor of the insane is wholly voluntary, and often capricious, and that no power exists to compel them to labor, and that many of them are in a situation which puts labor entirely out of the question, and many of the inmates are State paupers, who are supported by this appropriation ; and while, on the one hand, we would express our hopes that the annual appropriations of the State, for her charitable institutions, will be the last to be withheld, or essentially reduced, on the other hand, we would remind those who have the management and expenditure of the large sums appropriated, of the necessity of the strictest economy, that their continuance is entirely dependent on the breath of public favor, on the credit these institutions maintain with the great mass of the people, most of whom obtain their own means of support by untiring industry and economy.

It appears, from the report of the trustees, that twenty incurables, who have been inmates of the hospital from the beginning, and still remain there, have already cost the Commonwealth, in this institution, \$720 each, while an average of the last twenty cases discharged from the hospital cured, cost only \$47 50 each. It appears, then, that each one of these incurables has occupied the place and consumed the expense of sixteen recent or curable cases. It appears, also, that ninety applications were rejected during the last year for want of accommodations. How many of these cases, presumed to be mostly recent, may in consequence of this exclusion become chronic and incurable, it is melancholy to reflect. Whatever may have been the original design of the institution, experience shows, that its character as a hospital to restore the maniac to society, and to usefulness, is quite as

important as its character as a receptacle for the safe and comfortable confinement of incurables. And if the terms of the statute do not permit the trustees to commit persons to the care and custody of those who are chargeable for their maintenance, until they can be pronounced absolutely harmless, by recovery or imbecility, we would respectfully suggest the propriety of giving them a large discretionary power to do so where friends or towns are desirous of receiving them, and where the danger is not imminent, and where there is a reasonable prospect that they might be made comfortable.

As a hospital for the cure of the insane, it stands unrivalled, at least in this country, and if its high advantages can be brought to operate principally on recent and curable cases, it may be hoped, that few in this State will be suffered to become chronic and incurable, and that after a few years its ample wards will afford full accommodation to all who may need its aid. When most of those classes whose insanity depends on voluntary causes, and by the exposures of the various reports, and the great reform in the use of spirits saved from ruin, and when cases of insanity are mostly attended to while recent, we may expect a great decrease in the number of the insane, and hope to diminish rather than increase our expenses for this unfortunate class of our fellow-citizens.

JEREMIAH SPOFFORD,  
SAMUEL CHANDLER,  
ELIJAH VOSE,  
GEO. BRADBURN,  
CHARLES WEBSTER.



*Taken from the Report of the Surgeons of the Massachusetts Charitable Eye and Ear Infirmary, for the year ending Oct. 24, 1839.*

The number of out-patients who have applied during the year is 610.

With diseases of the Eye,

Males,	215
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Females,	266
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With diseases of the Ear,

Males,	48
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Females,	68
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Of these patients there were

Not treated,	17
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Relieved,	4
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Not Relieved,	4
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Recovered,	567
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Under treatment,	18
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The patients were of the following ages :

Males under 10 years,	66
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“ from 10 to 20,	37
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“ “ 20 “ 30,	61
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“ “ 30 “ 40,	42
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“ “ 40 “ 50,	28
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“ “ 50 “ 60,	17
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“ “ 60 “ 70,	10
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“ “ 70 “ 80,	3
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“ “ 80 “ 90,	0
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“ “ 90 “ 100,	0
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Females below 10 years,	84
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“ from 10 to 20,	61
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“ “ 20 “ 30,	76
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“ “ 30 “ 40,	56
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“ “ 40 “ 50,	37
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“ “ 50 “ 60,	13
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“ “ 60 “ 70,	12
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# 16 PUBLIC CHAR. INSTITUTIONS. [March,

Females from 70 to 80,	3
" " 80 " 90,	1
" " 90 " 100,	1

By this table it appears, that the great proportion of the applicants are under forty years of age, and may be, if restored to sight, not only able to support themselves, but others who may be dependant upon them.

The number of patients received and treated in the house during the year is 85.

Males,	57
Females,	29

Of the following ages :

Males under 1 year,	1
" from 1 to 10,	4
" " 10 " 20,	11
" " 20 " 30,	10
" " 30 " 40,	12
" " 40 " 50,	10
" " 50 " 60,	4
" " 60 " 70,	7
" " 70 " 80,	2

Females under 1 year,	4
" from 1 to 10,	6
" " 10 " 20,	7
" " 20 " 30,	6
" " 30 " 40,	2
" " 40 " 50,	1
" " 50 " 60,	1
" " 60 " 70,	2

With the following results :

Discharged Cured,	34
" Relieved,	30
" Incurable,	8
Treatment postponed,	2
Declined treatment,	1
Result unknown,	1
Under treatment,	10

The whole number of patients treated at the Infirmary, in out-patients, 610 ; house-patients, 86=696.

Among the diseases treated, the case of cataract has numbered 30, viz. 20 males, and 10 females. Of these, 20 were operated for on one or both eyes, and for 10 the treatment was postponed or the operation declined.

The number of children born with Cataracts who have been operated for is 5.

So far as is ascertained, all these cases have been restored to vision.

The result of the other cases of cataract is as follows :

Able to read,	12
Distinguish objects,	1
No vision,	1
Result unknown,	1

Of Amaurosis there have been

Males,	20
Females,	42
Cases,	62

The number of females between the ages of 15 and 35 years is 30. All these with one exception had her disease produced by the derangement of the system consequent upon sedentary employments, such as mantua making, straw braiding, copying, &c.

The character of the individuals treated in the house has been such as to show the public benefit of this charity.

One gentleman, formerly a member of the Legislature, was restored to sight by the extraction of cataracts, who had been reduced by the loss of vision. Some have been taken from alms-houses and been enabled to gain their living on the restoration to sight. Many dependent upon their sight for daily support and independent when in health have been restored to the use of their eyes. The expression of satisfaction among the patients has been almost universal, and of strong gratitude very frequent.

The Annual Report of the Treasurer is annexed.

Dr.	Mass. Charitable Eye and Ear Infirmary.	Cr.
Policies in Hosp. Office,	\$6,700 00	Stock, . . . . . 20,079 68
Real Estate in Green st.,	22,149 34	Notes Payable, . . . . . 11,000 00
A. & A. Lawrence & Co.,	2,224 51	
Cash, . . . . .	5 83	
	<hr/> \$31,079 68	<hr/> \$31,079 68
3		

# 18 PUBLIC CHAR. INSTITUTIONS. [March,

The property of the Institution consists of

Amount in Hospital Office, . . . .	\$6700 00
Real estate in Green street, . . . .	22,149 34
In hands of A. & A. Lawrence & Co., . . . .	2,224 51
Cash in hands of Treasurer, . . . .	5 83

---

\$31,079 68

Deduct amount of the note given on purchase of  
house in Green street, . . . . . 11,000 00

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Property of Mass. Charitable Eye and Ear Infirmary, Oct. 25, 1838, . . . . . \$20,079 68

The Treasurer of the Massachusetts Charitable Eye and Ear Infirmary herewith submits his Trial Balance. He has paid out on account of current expenses of the Institution, \$1,850 55. Amount received from annual subscription, \$108.

Respectfully submitted,

J. WILEY EDMANDS.

Boston, Oct. 25, 1838.

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The above sum of \$1,850 55, paid by the Treasurer on account of the current expenses of the establishment, does not include all the expenses of the house. Besides this, a sum has been received for the board of some of the inmates of the house, which make the whole expense of the establishment to be about \$2,400, for the year.

No effort has hitherto been made to extend a knowledge of the Institution by advertising or other means, nor of inviting the attention of those afflicted with complaints of the eye to the Infirmary, because, until an experiment shall be made how far the limited means of the charity could be extended, it was unsafe to invite more to seek its aid than could be received. But under the very economical and judicious management of the superintendent, it is found that a greater number can be provided for, its assistance will therefore be hereafter more widely diffused.

The above statistical account and remarks are respectfully presented to the Honorable Committee on Charitable Institutions of the Legislature of the Commonwealth in behalf of the managers of the Massachusetts Charitable Eye and Ear Infirmary, by

JOHN JEFFRIES,

*Chairman of the Standing Committee.*

Boston, March 26, 1839.



**SENATE.....**

**.....No. 67.**

---

**A N A C T**

**TO PROVIDE FOR OBTAINING THE**

**STATISTICS OF CRIME.**

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**Commonwealth of Massachusetts.**

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IN SENATE, March 30, 1839.

*Ordered*, That the Committee on the Judiciary inquire if any, and what measures are necessary to obtain more full and extensive information from the several Courts in this Commonwealth, in relation to prosecutions and convictions for crime.

CHARLES CALHOUN, *Clerk*.



**Commonwealth of Massachusetts.**

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IN SENATE, April 3, 1839.

The Committee on the Judiciary, to whom was referred an order to inquire what measures, if any, are necessary to obtain more full and extensive information from the several Courts in this Commonwealth in relation to prosecutions and convictions for crime, have considered the same, and report the accompanying Bill.

SAMUEL B. WALCOTT, *Chairman.*

**Commonwealth of Massachusetts.**

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In the Year One Thousand Eight Hundred and Thirty-Nine.

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**AN ACT**

To provide for obtaining the Statistics of Crime.

**BE** *it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows :*

1    SEC. 1. The reports now required to be made by  
2 the district attorneys to the attorney general, in the  
3 month of November of each year, shall hereafter be  
4 made on or before the fifteenth day of January, and  
5 shall severally contain an account of their official busi-  
6 ness to the last day of the preceding month of De-  
7 cember, setting forth therein the names of the persons  
8 prosecuted, the crimes, offences or misdemeanors for  
9 which such prosecutions were had, the result thereof,  
10 and the punishment awarded against any persons con-

11 victed thereon; and they shall further state the  
12 amount of the bill of costs in each case, and whether  
13 the same was paid by the defendant. And the attor-  
14 ney for the Commonwealth in the county of Suffolk  
15 shall make his annual returns in manner aforesaid.

1 SEC. 2. The several police courts shall, on or be-  
2 fore the fifteenth day of January of each year, trans-  
3 mit to the attorney general a report of the number of  
4 complaints acted upon in such court, the crimes, of-  
5 fences or misdemeanors for which such complaints  
6 were made, the results thereof, and the punishments  
7 awarded against any persons convicted thereon, to-  
8 gether with the amount of the bill of costs taxed in  
9 each case, and how the same was paid; and said re-  
10 port shall be made up to the last day of the preceding  
11 month of December.

1 SEC. 3. The several county treasurers shall, on or  
2 before the fifteenth day of January of each year,  
3 transmit to the attorney general a list of all the  
4 cases in which any justice of the peace has been  
5 allowed costs for any proceedings final before such  
6 justice, specifying therein the cause of prosecution,  
7 its result, and the punishment, if any, that has been  
8 awarded thereon, and the amount of the costs so  
9 allowed.

1 SEC. 4. It shall be the duty of the attorney gen-  
2 eral, instead of the report now required, to prepare  
3 from the foregoing returns, and transmit to the Leg-  
4 isature annually, as early in the month of Febru-  
5 ary as is practicable, such abstracts and tabular state-  
6 ments as will show the nature and extent of crime in  
7 this Commonwealth and in the several counties there-  
8 of, the number of prosecutions, and the results there-

9 of, and the punishments awarded, particularly dis-  
10 criminating between those crimes which are perpe-  
11 trated against the person and against the rights of  
12 property, and whether with violence or without vio-  
13 lence, the amount of the costs arising in such prose-  
14 cutions, and whether the same are paid by the per-  
15 sons accused or not, with all such other information  
16 as may present full and complete statistics of crime,  
17 and the operation of criminal laws in this Common-  
18 wealth, and with such observations and statements as  
19 in his opinion the criminal jurisprudence, and the pro-  
20 per and economical administration of the criminal  
21 law shall warrant and require.



SENATE.....

.....No. 68.

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**REPORT AND RESOLUTIONS**

**CONCERNING THE**

**MASSACHUSETTS CLAIM.**

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**Commonwealth of Massachusetts.**

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HOUSE OF REPRESENTATIVES, Jan. 12, 1839.

*Ordered*, That so much of the Address of His Excellency the Governor as relates to the Claim of Massachusetts on the United States be referred to a special joint committee, and the following gentlemen were appointed, namely :

Messrs. CUSHMAN, *of Bernardston*,  
STODDARD, *of Fairhaven*,  
ROGERS, *of Southampton*.

Sent up for concurrence.

L. S. CUSHING, *Clerk*.

IN SENATE, January 14, 1839.

Concurred, and Messrs. KINNICUTT and KING are joined.

CHARLES CALHOUN, *Clerk*.

## Commonwealth of Massachusetts.

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SENATE, April 4, 1839.

The Committee to whom was referred so much of His Excellency the Governor's Address as relates to the Massachusetts Claim, submit the following

## REPORT:

In His Excellency's Address to the Legislature at the commencement of the session, he says, "In the communication made to the Legislature at the commencement of the last session, I expressed satisfaction at the progress made in the settlement of the Massachusetts Claim. As it had passed the ordeal of the accounting officers of the Government on principles sanctioned by Congress, and as the amount found due,—two hundred and seventy-two thousand seven hundred and sixteen dollars,—had been reported to the House of Representatives by the Secretary of War, a strong belief was entertained that the session would not close without an appropriation. This hope was disappointed; but as the subject may yet be brought up as a part of the unfinished business of the last session, I trust the present session will not be allowed to expire, without the final performance of this long delayed act of justice to Maine and Massachusetts."



The Committee entertaining the same hope as that expressed by His Excellency, determined to delay reporting upon the subject, until it should be ascertained what action would be had upon it by Congress. The following correspondence, which has been communicated by the Governor to the Committee, will show the result of the proceedings of that body upon this subject, and the further measures in consequence thereof, taken by the Massachusetts delegation.

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WORCESTER, March 25th, 1839.

*To His Excellency the Governor of Massachusetts :*

SIR :—In December 1837, the Secretary of War communicated to Congress the amount due to the Commonwealth for services and disbursements during the late war with Great Britain ; the payment of which has been unjustly delayed for more than twenty years. No notice, beyond the commitment to the Committee on Military Affairs of the House, having been taken of it at the session of 1837-8, or at the late session, it seemed expedient to those who represented the State, that an effort should be made to provide for its allowance. Accordingly, on the 2d of March inst., a motion was made and carried in the Senate, authorizing an appropriation for it in the army bill, but the amendment of the Senate was rejected in the House, on the alleged ground that the sum due had never been ascertained.

The delegation thereupon, for reasons assigned by themselves, addressed a letter to the Secretary of War, a copy of which with the answer, is enclosed, and placed at your disposal. This communication is not made at the request of the delegation, but under the conviction that it would meet with their approbation.

I have the honor to be

Your Excellency's obedient servant,

J. DAVIS.

WASHINGTON, *March 3, 1839.*

SIR :—You are probably aware, that the Senate made provision for the allowance to the State of Massachusetts, of the sum of \$272,716 14, pursuant to your letter to the Speaker of the House of Representatives, dated Dec. 23d, 1837, which was struck out of the bill by the House on the 3d inst.

In the debate, it was alleged in substance, that the claim had never been examined, so as to ascertain what was due to the State, pursuant to the resolution of the House of Representatives, directing such an examination, passed the 24th day of February, 1832, and assurance was given to the House, that the member making this declaration was sustained by the authority of the Department.

If this be so, we have labored under great misapprehension as to the purpose of this investigation, and the object of the report.

That we, and, through us, our constituents, may be better informed, we are anxious to learn,—

1st. Whether the examination which has been made was not made with a view to ascertain what was due to the State of Massachusetts, by virtue of the provisions of the act of May, 1830 ?

2d. If this is not so, whether any proceedings have been had in fulfilment of the provisions of the resolution of the House of Representatives, passed the 24th day of Feb. 1832 ? and

3d. Whether any additional steps, on the part of the State, are necessary to give despatch to this long-delayed claim ?

Not doubting that all obstacles had been surmounted, except obtaining from Congress an appropriation, we cannot conceal that we have been greatly surprised and disappointed at the result, and the reasons upon which it stands, and knowing that in both Massachusetts

and Maine, public belief accords with our own, we are all anxious to be correctly informed, and for this reason we desire to be enlightened on the above points.

And have the honor to be,

Your obedient servants,

JOHN DAVIS,  
JOHN QUINCY ADAMS,  
JOHN REED,  
LEVI LINCOLN,  
LEVERETT SALTONSTALL,  
C. CUSHING,  
NATH'L B. BORDEN,  
RICHARD FLETCHER,  
GEO. GRENNELL,  
WM. PARMENTER,  
G. N. BRIGGS,  
WM. S. HASTINGS.

*To the Hon. J. R. POINSETT, Sec. of War.*

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WAR DEPARTMENT, *March 20th, 1839.*

SIR,—In reply to the inquiries of the delegation from Massachusetts, directed to me, and enclosed in your letter of the 12th instant, I have the honor to state, that the resolution of the House of Representatives of February 24, 1832, alluded to in this communication, “instructed the Secretary of War to examine the Claim of the State of Massachusetts for disbursements for military purposes during the late war, according to the rules or cases set forth in an Act of Congress, providing for the settlement of said claim, approved the 31st day of May, 1830 ; and if any further sum shall be found due to the claimant by such examination to report the same to the House.”

This resolution, it appears, was not acted upon by the former Secretary of War, probably for want of sufficient evidence to substantiate

the claim agreeably to existing rules and requirements ; and in 1836 a joint resolution was passed and approved, relaxing the rules of evidence, “ That the Secretary of War, in preparing his report pursuant to a Resolve of the House of Representatives, agreed to on the twenty-fourth of February, eighteen hundred and thirty-two, be, and he hereby is, authorized, without regard to existing rules and requirements, to receive such evidence as is on file, and any further proofs which may be offered, tending to establish the validity of the claims of Massachusetts upon the United States, or any part thereof, for services, disbursements, and expenditures, during the late war with Great Britain ; and in all cases where such evidence shall in his judgment prove the truth of the items of claim, or any part thereof, to act on the same in like manner, as if the proof consisted of such vouchers and evidence, as is required by existing rules and regulations, touching the allowance of such claims.”

In conformity with these resolutions, I examined the Claim, and settled the principles applicable to each item, and found the further sum of two hundred and seventy-two thousand seven hundred and sixteen dollars due to the State of Massachusetts, and so reported to the House. It was contended by some members of the Military Committee, that the accounts should have been examined and settled by the proper Accounting Officers of the Treasury, upon the principles established by this Department, and that the resolution of the House of Representatives of the 24th of February, 1832, contemplated this being done, when it directed that the examination should be made according to the *rules and cases* set forth in the Act of May, 1830, which provides expressly “ that the proper Accounting Officers of the Treasury, under the superintendence of the Secretary of War, be, and they are hereby, authorized and directed to credit and settle the claims of the State of Massachusetts against the United States for the services of her Militia, during the late War.” If this view of the law and resolutions of Congress be correct, then the items allowed by me require the examination of the third Auditor, and the credits allowed by him, will be the balance due the State of Massachusetts. But it appeared to me, taking the two resolutions together, that my examination was not confined to the cases under the Act of 1830 ; but extended to “ services, disbursements and expenditures during the late war with Great Britain,” and that the rules of evidence, applied by

the Accounting Officers of the Treasury, were to be disregarded ; and that in all cases where the evidence adduced, in my judgment, proved the truth of the items of claim or any part thereof, to act in like manner as if the proof consisted of such vouchers and evidence as is required by existing rules and regulations touching the allowance of such claims. In my opinion, this resolution devolved the duty of the examination upon me, and directed the manner in which it should be made ; and after fulfilling that obligation, I reported to the House of Representatives the balance due the State of Massachusetts.

Very respectfully,

Your most ob't Servant,

J. R. POINSETT.

HON. JOHN DAVIS, *Worcester, Massachusetts.*

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On account of the extraordinary decision of the House of Representatives, in the rejection of an appropriation for the payment of so much of this claim as has been reported by the Secretary of War, to be due to Massachusetts, it may not be improper to review in a brief manner, the history of the proceedings which have issued in this result.

Passing over the fourteen years next succeeding the close of the war, it will be sufficient, for the purpose of correctly understanding the present position of the claim, to remark, that in 1826, the House of Representatives, by a resolution of the fifteenth of December, referred the Claim to the Secretary of War, with instructions to him to report thereon. Preliminary to his report, the Secretary referred the Claim to the Third Auditor of the Treasury, directing him to examine "the whole Claim in all

all its parts, to classify it, and to note in detail all objections to such items and parts of it as might be found objectionable. The Third Auditor performed this service, applying to the claim the severe and strict rules of evidence, both in matters of form and substance, by which he is governed in settling the accounts and claims of individuals. He classified the claim under nine general heads, and in twelve volumes of closely written manuscript noted his objections to the several items of it which he disallowed, and in 1828, made his report to the Secretary of War, by which it appeared, that the amount of the claim was \$843,349 60; the portion of it admissible on the principles applied by him, \$130,748 26; and the amount of items inadmissible, unless under the special sanction of the Secretary of War, \$412,601 34. Of this last amount, the sum of \$240,759 59 was made up of items denominated "miscellanies." In this manner the claim was most laboriously, critically, and fully examined by the proper accounting officer of the Treasury. The Secretary, as a compliance on his part with the resolution of 1826, transmitted this report of the Auditor to the House of Representatives, without exercising the revising power with which he was invested, which he had exercised in the settlement of claims of other states, of the same or similar character, and the exercise of which was essential in this case in order that justice might be done.

No further action was had upon the subject by Congress, until the year 1839, when a law was passed, appropriating the sum of \$130,748 26, being the amount reported by the Third Auditor as admissible, to be applied to the payment of the claim, provided, that so much should be ascertained to be due upon the principles contained in the law, one of the provisions of which was,

“that the proper accounting officer of the Treasury, under the superintendence of the Secretary of War, credits and settles the claims of Massachusetts, against the United States, for the services of her militia during the late war, when the militia of said State was called out to repel actual invasion, or under a well-founded apprehension of invasion ; *provided, their numbers were not in undue proportion to the exigency.*” After a long discussion between the Secretary of War and the Honorable John Davis, then the agent of the State for the prosecution of the claim, this last amount was reported to be due, and was paid to the State.

There was still remaining, the large balance of \$412,601 34 unallowed. For the settlement of this, the agent renewed his application, but the Secretary declined entering upon the examination, chiefly, for the reason, that as the whole amount appropriated had been paid, the examination would be fruitless.

The agent then being a member of the House of Representatives, on the 24th of February, 1832, introduced a resolution into that body, which passed, *instructing* the Secretary of War to examine the claim, “and if any further sum shall be found due to the claimant, by such examination, to report the same to the House.”

Under this resolution, the examination of the claim was renewed and continued with various interruptions until Nov. 1834, when an analysis of the class of items denominated “*Miscellaneous*” in the report of 1828, the items of the other classes sufficiently appearing in that report, was made by the third auditor, and transmitted by the Secretary of War to Gov. Davis, then chief magistrate of the State, and by him communicated to the Legislature. By reference to this document, and others

communicated at various times to the Legislature, it will appear, that the vouchers, were, to some extent, defective and informal, and, for that reason, many items which otherwise would have been allowed, were suspended. It was impossible after the lapse of twenty years to remedy these defects and informalities, which had arisen at the time, probably, from a want of information as to the rules and regulations of the department of War.

To supply this deficiency, which, after all, seemed to be rather a matter of form than of substance, Gov. Davis, then a member of the United States Senate, in 1836 introduced into that body the resolution, quoted by Mr. Secretary Poinsett in his communication, above inserted, modifying the rules of evidence which had before that time been applied in the examination of this claim. This resolution passed both Houses of Congress, received the sanction of a law, and thenceforward became the authoritative rule by which evidence was to be received. It provided that the Secretary of War be authorized, without regard to existing rules and requirements, "to receive such evidence as is on file, and any further proofs, which may be offered, *tending to establish* the validity of the Claim of Massachusetts," "and in all cases, when such evidence shall in his judgment prove the truth of the items of claim or any part thereof, to *act on the same* in the same manner as if the proof consisted of such vouchers as are required by existing rules and regulations touching the allowance of such claims." Prior to the passage of this resolution, the Hon. Isaac C. Bates had been appointed the State agent for the claim. As soon as the Secretary of War found leisure to attend to the business, Mr. Bates entered with him upon an examination of the claim according to the rules of evidence estab-



lished by the resolution last quoted, and communicated to the Secretary, in writing his remarks at length upon the suspended and rejected items as arranged in the third auditor's report of 1828. The result of this examination attended, as the documents will show, with great labor on the part of the agent, was an allowance, by the Secretary of War, to the State, of the greater part of the balance claimed, and he accordingly made his report to the House of Representatives, as follows :

“ DEPARTMENT OF WAR, }  
Dec. 23, 1837. }

SIR :—In compliance with a resolution of the House of Representatives of March, 1836. I have examined the Claims of the State of Massachusetts, for militia services and expenditures during the late war with Great Britain, and have now the honor to report.

The original amount of these claims was \$843,349 60, which, by a payment of \$11,000, in 1817, and one of \$419,748 26, in 1831, was reduced to \$412,601 34, which is still claimed. Of this sum, it appears, upon applying the same principles which have governed the department, in the settlement of similar claims made by other states, there will be due \$272,716 14, of which \$45,539 66, being for amount of accoutrements purchased by the State, arms, &c., to that amount must be charged to the State, and be withheld from its quota under the act of 1808, for arming and equipping the militia. And all warlike stores remaining in the State, which are paid for by the General Government, must be delivered up to the possession and use of the United States.

Very respectfully,

J. R. POINSETT.

Hon. JAMES K. POLK,  
Speaker of the House of Representatives.”

Such, briefly, is the history of the proceedings for the examination of this claim, which, notwithstanding the ability, the earnestness and the fidelity with which the agents of the State have discharged their duty, was protracted from various causes, to December, 1837. When at length this report was made by the Secretary of War, allowing the sum of \$272,716 14 as due to her, Massachusetts certainly had a right to expect that Congress would forthwith make an appropriation for its payment. But in this she was disappointed. Notwithstanding the length of the Session of 1837-8, which continued into the month of July, no order was taken upon the report of the Secretary beyond its reference to a committee. Upon the re-assembling of Congress at its late Session, it was confidently expected that the justice which had been, perhaps accidentally, delayed, would be promptly extended to the State. Here too we are met, not only with a delay, but with what seems to your Committee to be a denial of justice. An appropriation inserted in the Army Bill by the Senate, for the payment of the amount reported as due by the Secretary of War, is advisedly, and upon debate, stricken out in the House of Representatives, for what sufficient reason your Committee are at a loss to imagine.

The claim having been previously examined and analysed by the proper accounting officer of the Treasury, item, by item, throughout, and all his objections thereto fully noted, it was subjected to the revision and had recently undergone the examination of one of the highest officers of the Government, specially appointed by Congress for this purpose, and instructed in the discharge of his duty by special rules. That officer in pursuance of the authority given him, and in obedience to his instructions, reports that a

certain sum is due "upon the same principles which have governed the department in the settlement of similar claims made by other States." Your Committee are not aware that the records of Congress present another case, where such an examination of the claim of a State, made by an officer so appointed and instructed, has been considered unsatisfactory or even questioned. Yet, in this instance, the report of the Secretary of War, after being permitted to remain unacted upon through nearly two Sessions of Congress, when, at the last hour, action is had, is repudiated, and the amount awarded to be due, refused payment.

Your Committee think that Massachusetts has cause to complain of such treatment. When it is considered that almost a quarter of a century has elapsed since these disbursements were made, and that they were then made in defence of the country from foreign invasion, that the State has from that time forward pressed her claim upon Congress for remuneration, and that the claims of other States for services precisely similar, rendered at the same period, have long since been settled and paid, it cannot be a matter of surprise that this Commonwealth should feel injured by this extraordinary decision, nor that in the indulgence of a proper regard for her own dignity and character, she should express that feeling in a manner becoming her sense of the injury sustained.

The Committee therefore recommend the adoption of the following resolutions :—

By order of the Committee,

THOS. KINNICUTT, *Chairman.*

**Commonwealth of Massachusetts.**

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In the Year One Thousand Eight Hundred and Thirty-Nine.

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**RESOLUTIONS****Concerning the Massachusetts Claim.**

*Resolved*, That the rejection by the House of Representatives, at the late session of Congress, of an appropriation to pay the sum reported by the Secretary of War, to be due to the State of Massachusetts for services, disbursements and expenditures during the late war with Great Britain, is a denial of justice to this Commonwealth, and a violation of public duty calculated to impair the confidence of the people and the states of this Union in the national councils.

*Resolved*, That a copy of the foregoing report and resolution be transmitted to each of our senators and representatives in Congress.



SENATE.....

.....No. 69.

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# REPORT

ON THE SUBJECT OF A

MAP OF THE STATE.

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**Commonwealth of Massachusetts.**

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IN SENATE, Feb. 20, 1839.

*Ordered*, That Messrs. Spofford, Goodrich and Whitman, be a Committee to inquire when the Map of the State is likely to be completed in the present mode of construction ; also into the expediency of suspending all further expenditure on the part of the State for that purpose, and of disposing of the materials and surveys now on hand for that purpose, to such person or persons as will contract to complete a map, and furnish copies to the State, or citizens thereof, on the most favorable terms.

CHARLES CALHOUN, *Clerk*.



## Commonwealth of Massachusetts.

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SENATE, April 4, 1839.

The Committee to whom was referred an order of the Senate of Feb. 20, 1839, ask leave to

## R E P O R T :

That they have attended to the business assigned them, that they have held communication with the Executive, and with gentlemen who have served on former committees, and had several interviews with Mr. Borden, the surveyor; now engaged in the construction of the map. The result of their investigations is, that in their opinion, the State has been in some instances subjected to gross imposition, and that expenditures have been incurred which tended little to the furtherance of the object in view.

The Committee feel, that, when the facts are considered, that more than fifty thousand dollars have been expended, exclusive of town surveys, and more than ten years of time consumed on a work expected to have been completed in two or three years; and that the object is yet far from being attained, the people have just cause of complaint. The Committee do not feel that they have the data whereon to found an opinion as to the conduct



or competence of the several agents, which have been at various times employed during this long period ; neither do they feel competent, or that it would be proper for them to form or give any opinion as to the degree of vigilance with which former officers or committees of the Legislature have superintended the work, nor would they be understood to make any reflections upon the past or present officers of the government ;—the probability seems to be, that, among the other numerous and important duties devolving on the different officers, some of the agents, finding themselves comfortably reposing upon the liberality and confidence of the State government and people, have been in no haste to bring their labors and their emoluments to a conclusion. From various inquiries, your Committee are of opinion, that the difficulty in finding any particular instance of neglect or misconduct so glaring as to render any sudden change in such agents absolutely necessary, have induced some of our officers in past years to forbear that direct interference which they might have thought desirable, in the expectation, that the cause of dissatisfaction would be removed or become more flagrant, or that the disagreeable task of reforming errors, by direct interference, would, by the frequent changes in office, by elections, fall into other hands.

The Committee feel entirely confident that the present chief magistrate has felt deeply the high responsibility resting on him in this matter, and that he would most willingly co-operate with the Legislature in any reasonable expedient for bringing this drain upon the treasury to a speedy termination. But in pursuing this object he has not thought it expedient to make any sudden and total change in the manner of carrying on the work,—and your Committee, after considerable attention to the subject,

have arrived at the same conclusion, although they are satisfied, upon inquiry, that responsible persons might be found who would contract to take the materials in their present state, and complete the map, and furnish copies to the State, or individuals, upon reasonable terms, without further expense to the State. But the disadvantages of this course are so obvious, that the Committee could not feel justified in recommending it for your adoption.

In the first place, the State would lose the advantage of the local and personal knowledge of the topography of the State, which must have been acquired by the persons who have been long employed in making the trigonometrical survey, and which must be all-important in putting together the various parts of the State map.

Secondly, an entire change in the mode of constructing the map, and in the individuals employed, would in the present stage of the work, entirely remove all responsibility for its accuracy from any person, as any failure in that respect would be thrown by each party on the other, and the public have no possible grounds for fixing that responsibility on either.

Thirdly, to dispose of the copy-right as a reward for future labors, would entirely cut off any possibility of deriving from a sale of the work, a reimbursement in part, for the great expenses of the past: an object which your Committee trust will be kept steadily in view. And in reference to such sale, would not a distribution of this work, when completed, to State officers, and members of the Legislature, who may chance to be here at its completion, as has been usual with smaller works, and those relating chiefly to their own labors, be an encroachment upon the rights and the property of the people? and even a distribution of one copy to each town, in general

be a mere donation to the clerk for the time being, and be enjoyed by the citizens at large in no other manner than they would easily obtain by application to any neighbor, who might have purchased one for his own use? This map will be the joint result of the labor of many years, and a great amount of money expended by the people : and no exclusive privilege should accrue to the members of the Legislature of a single year, or to any set of men who are more able than the mass of their fellow citizens, to pay for what they wish to possess. But on the contrary, should not every copy be *sold*, and the price be as low as possible, to enable a large part of the people to become purchasers, and the proceeds accrue to the treasury of the Commonwealth, to reimburse it in part for this enormous expenditure?

Your Committee are satisfied that considerable difficulty and delay has arisen from the inaccuracy of many of the town maps, but they are further of opinion, that even this circumstance should no longer delay the work. Public opinion now imperiously demands that the surveyor should hasten to the end of his labors, in the mean time using all diligence to supply deficiencies, by inquiries and correspondence with officers of towns, engineers of railroads, and other gentlemen willing to co-operate in rendering the map as perfect as the nature of the case will admit.

Considerable confidence is expressed by the surveyor, and we believe is felt by those concerned, that another year will complete the plotting of the map, and prepare it for the hand of the engraver; and those who hold out this encouragement cannot but feel the necessity of using all possible diligence to fulfil this just expectation. Great expense has been incurred in collecting the survey and

materials for this work, and the people *demand* the use of them, before the changing circumstances of different portions of the Commonwealth shall render a large part of them superannuated and useless.

The Committee ask to be discharged from a further consideration of the subject.

JEREMIAH SPOFFORD,  
S. G. GOODRICH,  
JARED WHITMAN.



## SENATE....No. 70.

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### Commonwealth of Massachusetts.

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HOUSE OF REPRESENTATIVES, Jan. 12, 1839.

*Ordered*, That so much of the Address of His Excellency the Governor, as relates to the State Prison, be read, with the accompanying documents, to the Committee on Prisons, with instructions to have the documents printed.

Sent up for concurrence :

▶ S. CUSHING, *Clerk*.

IN SENATE, January 14, 1839.

Concurred :

CHARLES CALHOUN, *Clerk*.

**Commonwealth of Massachusetts.**

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HOUSE OF REPRESENTATIVES, April 5, 1839.

The Joint Standing Committee on Prisons, respectfully

**R E P O R T ,**

as follows :—

Your Committee, in the exercise of their duty, visited at several times the State Prison at Charlestown, and entered upon a general examination of the condition of that institution.

To the able and satisfactory return of the inspectors, submitted to the Legislature at an early period of the session, it is not apparent that any facts or considerations of moment can be added.

Throughout this extensive establishment, embracing among its inmates men of almost every variety of temperament, of intellect, and of habitude, a remarkable degree of order and subordination continues to be maintained.

It must be obvious, that the successful management of so numerous a body of convicts, gathered from so many

different walks in life, and doomed to expiate, in captivity and toil, crimes of such varied grades and dissimilar character, depends greatly, if not exclusively, upon the steady execution of a rigid system of discipline.

The internal economy of this penitentiary, in this, as in all other respects, administered, as it evidently is, by vigilant and faithful officers, seems to admit of but few, if any, improvements.

In their conferences with the warden and inspectors, our Committee have adventured to suggest some slight modifications of former and still existing usages, in regard refractory criminals, by way of experiment—the result whereof will probably be communicated to the General Court, in the next annual report of the board; and perhaps contribute somewhat towards a solution of important problem, as to the amount of severity best related to control and reclaim, while in ignominious age, the most degraded and abandoned of our species.

the last session, the committee on prisons, in a report, recommended sundry measures, the prompt execution of which, by the Legislature, your Committee gratified to learn, has been productive of salutary

Among these, were provisions for the support of day school within the prison—for the more effectual execution of the practice, on the part of visitors, of being presents upon convicts, and introducing prohibitions—and for a more liberal construction of the prescribing the quality and quantity of certain rations. The operation of these several amendments, during the past year, has been highly beneficial, as well on the interests of the institution, as on the condition of its inmates.

On the same occasion some suggestions were also



offered, touching the imperfect state of the workshops attached to the prison, together with an intimation in favor of the substitution of more commodious structures. No alterations, however, have since taken place ; and although the same necessity may be said to remain, your Committee cannot *now* renew the recommendation. Nevertheless, whenever the finances of the institution shall warrant the proposed improvement, it is not doubted that they may be advantageously applied to this purpose.

Per order.

S. HAYNES JENKS.

## SENATE....No. 71.

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### Commonwealth of Massachusetts.

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#### ARTICLE OF AMENDMENT.

The Constitution may be amended in the following manner:

In the year one thousand eight hundred and forty-three, and every tenth year thereafter, articles of amendment to the Constitution may be proposed in the General Court; and if such articles of amendment shall be agreed to by a majority of the Senate and two thirds of the House of Representatives, present and voting thereon, the General Court shall submit such proposed articles of amendment to the people; and if they shall be ratified by a majority of the qualified voters, voting thereon, at meetings legally convened and held for that purpose, they shall become part of the Constitution of this Commonwealth.

The ninth article of amendment of the Constitution, adopted by the people on the ninth day of April, in the year one thousand eight hundred and twenty-one, is hereby annulled.



## SENATE....No. 72.

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### Commonwealth of Massachusetts.

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#### ARTICLE OF AMENDMENT.

A census of the inhabitants of each city and town on first day of May, shall be taken and returned into secretary's office, on or before the last day of June, the year one thousand eight hundred and forty, and of tenth year thereafter, which census shall determine apportionment of senators and representatives for the of ten years.

several senatorial districts now existing shall be ment. The senate shall consist of forty members, the year one thousand eight hundred and forty, ry tenth year thereafter, the governor and council assign the number of senators to be chosen in trict, according to the number of inhabitants in , but, in all cases, at least one senator shall be to each district.

members of the house of representatives shall be d in the following manner: Every town or ning twelve hundred inhabitants, may elect one

## 2 ARTICLE OF AMENDMENT. [April,

representative ; and two thousand four hundred inhabitants shall be the mean increasing number which shall entitle it to an additional representative.

Every town containing less than twelve hundred inhabitants, shall be entitled to elect a representative as many times within ten years as the number one hundred and sixty is contained in the number of the inhabitants of said town.

Any two or more of the several towns may, by consent of a majority of the legal voters present, at a legal meeting in each of said towns, respectively, called forth at purpose, and held before the first day of August, in the year one thousand eight hundred and forty, and every tenth year thereafter, form themselves into a representative district, to continue for the term of ten years ; and such district shall have all the rights, in regard to representation, which would belong to a town containing the same number of inhabitants.

The number of inhabitants which shall entitle a town to elect one representative, and the mean increasing number, which shall entitle a town or city to elect more than one, and also the number, by which the population of towns not entitled to a representative every year, is to be divided, shall be increased respectively, by one tenth of the numbers abovementioned, whenever the population of the Commonwealth shall have increased to seven hundred and seventy thousand, and for every additional increase of seventy thousand inhabitants, the same addition of one tenth shall be made respectively, to the said numbers abovementioned.

In the year of each decennial census, the governor and council shall, before the first day of September, apportion the number of representatives which each city, town, and

representative district, is entitled to elect, and ascertain how many years within ten years any town may elect a representative, which is not entitled to elect one every year; and the governor shall cause the same to be published forthwith.

Nine counsellors shall be annually chosen from among the people at large, on the first Wednesday of January, or as soon thereafter as may be, by the joint ballot of the senators and representatives assembled in one room, who shall, as soon as may be, in like manner fill up any vacancies that may happen in the council, by death, resignation or otherwise. No person shall be elected a counsellor who has not been an inhabitant of this Commonwealth for the term of five years immediately preceding his election; and not more than one counsellor shall be chosen from any one senatorial district in the Commonwealth.

No possession of a freehold or of any other estate shall be required as a qualification for holding a seat in either branch of the general court or in the executive council.









**SENATE.....**

**.....No. 73.**

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**R E P O R T**

**OF THE**

**HON. CHARLES MARSTON, COMMISSIONER**

**OF THE**

**DISTRICT OF MARSHPEE.**

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*To His Excellency* EDWARD EVERETT :

SIR,

The enclosed Report would have been sent at the time prescribed by law, but I was unable in consequence of sickness, to prepare it.

Your obedient servant,

CHARLES MARSTON.

M E S S A G E .

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*To the Senate, and  
House of Representatives :*

I transmit for the information of the Legislature conformably to law, a communication from the Honorable Charles Marston Commissioner of the District of Marshpee, accompanying a Report of the state of the Treasury and affairs of said District.

These documents are sent in the original, to the Honorable Senate.

EDWARD EVERETT.

*Council Chamber, 9th April, 1839.*



*To His Excellency EDWARD EVERETT, Governor, and the  
Honorable Council.*

The Commissioner of the District of Marshpee, pursuant to the act establishing said district, makes report of the state of the treasury and affairs of said district, as follows, to wit :

1837,

Dec. 30—He charges himself, as treasurer of said district, with notes and accounts, in favor of said district, on sundry persons, in his hands, on settlement this day with the selectmen of said district, \$1288 60½

1838

	By cash received of Commonwealth for school from school fund and surplus fund,	146 91
April,	By cash of Commonwealth for support of sundry state paupers,	170 17
"	By cash of Commonwealth for bounty on foxes,	8 00
Dec.	By cash of selectmen for sale of wood, 1838,	35 00
"	By notes and cash of selectmen for hire of meadow in 1838,	159 50
"	By notes and cash of selectmen for rent of land and pasture in 1838,	38 00

1838,

Dec.	By cash and sundry notes of selectmen for sale of wood in 1838,	577 04½
"	By sundry notes of selectmen for rent of land,	16 00
"	By sundry notes of selectmen, for receipts of 1837,	80 50
"	By sundry notes of selectmen, for receipts of 1835 and '36,	47 00
"	By cash of selectmen, for receipts of 1835 and 6, not included in former reports,	130 00
		<hr/>
		\$2696 73
"	By cash, interest, of sundry persons,	24 92
		<hr/>
		\$2721 65

1838, *And he claims credit, as follows:*

Jan.	To cash paid Daniel Queppish, for bounty on fox,	50
"	" William Bates, for support of Hannah Pocknet,	53 25
March 5,	" Jonathan Hatch for teaching school two months,	40 00
April 28,	" Ebenezer Attaquin for labor on roads and carting for poor,	27 09
" "	" Abram Jackson, for carting for paupers,	4 50
" "	" Ezra Attaquin for boarding poor,	22 25
" "	" Wm. Marston, for supplies to poor,	25 48

1838,

April 28—	To cash paid Moses Pocknet for board-	
	ing poor,	50 10
" "	" Solomon C. Howland for	
	making coffins,	7 00
" "	" Daniel Queppish for services,	5 00
" "	" Joseph Gardner for labor,	2 53
May 7.	" Aaron Cornish for physician,	9 50
June 10.	Paid Isaac Coombs for labor on	
	roads and carting for poor,	12 29
"	" Ezra Stephenson as physician,	50 00
Dec.	" E. G. Perry for teaching school,	
	and cash paid by him for	
	school teacher in summer,	175 55
"	" town of Wareham on account of	
	Hannah Pocknet, a pauper,	39 52
"	" Abner Hicks for boarding poor,	34 78
"	" O. M. Hinckley for school books,	31 00
"	" Braddock Crocker for supplies	
	to poor,	76 84
"	" Moses Pocknet boarding the	
	poor,	21 62
"	" Solomon Attaquin for labor on	
	roads,	21 25
"	" on account of schools,	16 30
		37 55
"	" R. T. Crocker for supplies to	
	poor,	7 86
"	" Ebenezer Low for labor on	
	roads and carting for the poor,	14 00
"	" Abiathar Crocker, labor on	
	roads,	10 00
"	" carting for poor,	13 58

23 58



1838,

Dec.	Paid Thomas Phinney for labor,	4 00
"	" Calvin Fish, supplies to poor,	31 25
"	" Ezra Attaquin, supplies to poor,	22 82
"	" labor on roads,	21 92
		<hr/> 44 74
"	" Isaac Jones, supplies to the poor,	81 26½
"	" on account of school,	15 50
		<hr/> 96 76½
"	" Peter Lewis, supplies to the poor,	60 16
"	" on account of school,	8 55
		<hr/> 68 71
"	" Sundry persons on account of paupers,	27 50
"	" for school books heretofore,	9 82
"	" David Lovell, for labor on roads,	3 00
"	" carting for poor,	12 75
		<hr/> 15 75
"	" Asa Phinney, for supplies to poor,	115 00
"	" James B. Amos, for services as District Clerk,	8 00
"	" O. A. Coombs, for labor on high- ways,	10 25
"	" Selectmen, services for the year ending in the spring 1838,	
	Solomon Attaquin,	\$40 00
	Ebenezer Attaquin,	55 00
	Moses Pocknet,	35 00
		<hr/> 130 00

1839.]

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9

1738,

Dec. To services as commissioner in attending district meetings, and meeting with selectmen at various times, at and from home, and other labors,	\$30 00	
Horse and Carriage hire,	10 00	
Services as Treasurer,	40 00	
		<hr/>
		80 00
		<hr/>
		\$1,393 63½
Balance due the district on settlement, in notes and accounts against sundry persons, in the hands of the treasurer,		1,328 01½
		<hr/>
		\$2,721 65

DECEMBER 31, 1838.

CHARLES MARSTON,

*Commissioner and Treasurer of the District of Marshpee.*

We have examined the foregoing account, with the vouchers to support it, and are satisfied, that the same is correct, and hereby declare our approval thereof.

EBENEZER ATTAQUIN,  
SOLOMON ATTAQUIN,  
MOSES POCKET,

*Selectmen of the District of Marshpee.*

DECEMBER 31, 1838.

*Statement of the Affairs of Marshpee.*

The revenue of the district arises from the rent of meadow and land, and sale of standing wood, on the common lands, the whole amount cannot consistently be all collected in cash at the time of sale, therefore notes are taken for the balance, and it would naturally follow, perhaps even with much caution that now and then a note would become bad, or be a discount on it, although the annual average loss would be but small, not more than would be lost by bad taxes on the same amount in other towns. A considerable part of the above balance now in the hands of the treasurer is in notes and accounts which are of but little value, a portion of which was handed over with other effects by the overseers at the change of the law in 1834 being unavailable receipts, for rent of land and meadow, and for sale of wood, which has been accumulating for thirty years, (a small part of this was for receipts for the last ten years before the change of the law,) being but a small annual average loss, from ten to fifteen dollars. These notes the overseers did not feel authorized to discharge ; they therefore remained in the treasury, but a greater portion of these unavailable securities have been taken by the selectmen for rents of land and meadow, and sale of wood in the years 1835, 1836, and 1837. They were cautioned from time to time not to take any notes which had not a good endorser, but they have been negligent in this respect. At the commencement of the past year (1838,) considering it to be my duty as commissioner and treasurer I informed them

that I could not receipt for notes that I considered worthless or of little value ; the selectmen were satisfied that the course I had taken was perfectly proper, and they were determined to be more careful thereafter, and such measures were taken as have secured to the district the receipts of the past year (1838,) so far as rendered, in cash or good paper, allowing a discount of a few dollars. The district has passed a vote instructing the selectmen to discharge from the treasury all securities that they consider worthless, which will probably be done the coming year, an account of which will appear in the commissioner's report, to the intent that the state of their financial affairs may be well understood.

There is due from the district, for the support of the poor, &c., by estimation, . \$867 00

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Due to the district, for rent of land and marsh, and sale of wood, not yet come into the hands of the treasurer, for the years 1835 and 1836. . . . . 157 29

Also, due for rent of land and marsh, and for sale of wood, not yet come into the hands of the treasurer, for the year 1837, . . . . . 83 66

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\$240 95

This does not include ship-timber for a vessel built in part by sundry proprietors.

It is not expected that the selectmen can ever collect this outstanding rent of \$240 95.

Whole amount of income from the district the year past, as at present rendered to the commissioner, is as follows :

Sale of wood, . . . . .	\$648 97
Rent of meadow, . . . . .	175 75
“ land, . . . . .	64 87
From Commonwealth for schools, .	146 91
“ “ state pauper acc’t, .	170 17
“ “ bounty on foxes, .	8 00
	<hr/>
	\$1,214 67

Of the above income, there has been paid in to the treasurer,—

Cash of Commonwealth for schools, .	\$146 91
“ “ state paupers, .	170 17
“ “ bounty on foxes, .	8 00
By the selectmen, in cash and notes, for sale of wood and rents of land and meadow, .	825 24½
Amount not yet paid in for sale of wood, &c., .	64 34½
	<hr/>
	\$1,214 67

The expenses of the past year are as follows :

For the poor, . . . . .	\$818 49
“ schools, . . . . .	242 00
“ highways and bridges, . . . . .	66 45
“ selectmen’s services, . . . . .	130 00
“ incidental expenses, . . . . .	13 50
“ Commissioner’s services as commissioner and treasurer in the ordinary affairs of the district, and extra services, .	50 00
	<hr/>
	\$1,350 44

The District of Marshpee is divided into two school districts. A school has been taught during the past year five months, including both school districts, by a male teacher, at an expense of \$124, and seven months by a female teacher, at an expense of \$90, including board. Books have been furnished by the district to the amount of \$28; whole expense, \$242, of which, \$146 91 has been received from the Commonwealth with grateful remembrance. Whole number of scholars between the ages of four and sixteen, is 68; of which, 31 are females, and 37 males. The average attendance in the summer is about 36, and in the winter, about 50. The schools are well supplied with books. Two schools are now in operation, one is taught by a male teacher, (Rev. E. G. Perry,) at wages of \$30 per month, including board; the other is taught by a female, (Miss Winslow,) whose wages are \$16 per month, including board. Both teachers are qualified according to law, faithful, well calculated to be useful in their employment, and appear to take a great interest in the welfare of the scholars.

All which is respectfully submitted,

CHARLES MARSTON,

*Commissioner of the District of Marshpee.*

SOLOMON ATTAQUIN,

EBENEZER ATTAQUIN,

*Selectmen of the District of Marshpee.*

December 31, 1838.

P. S. The other selectman was not present.















